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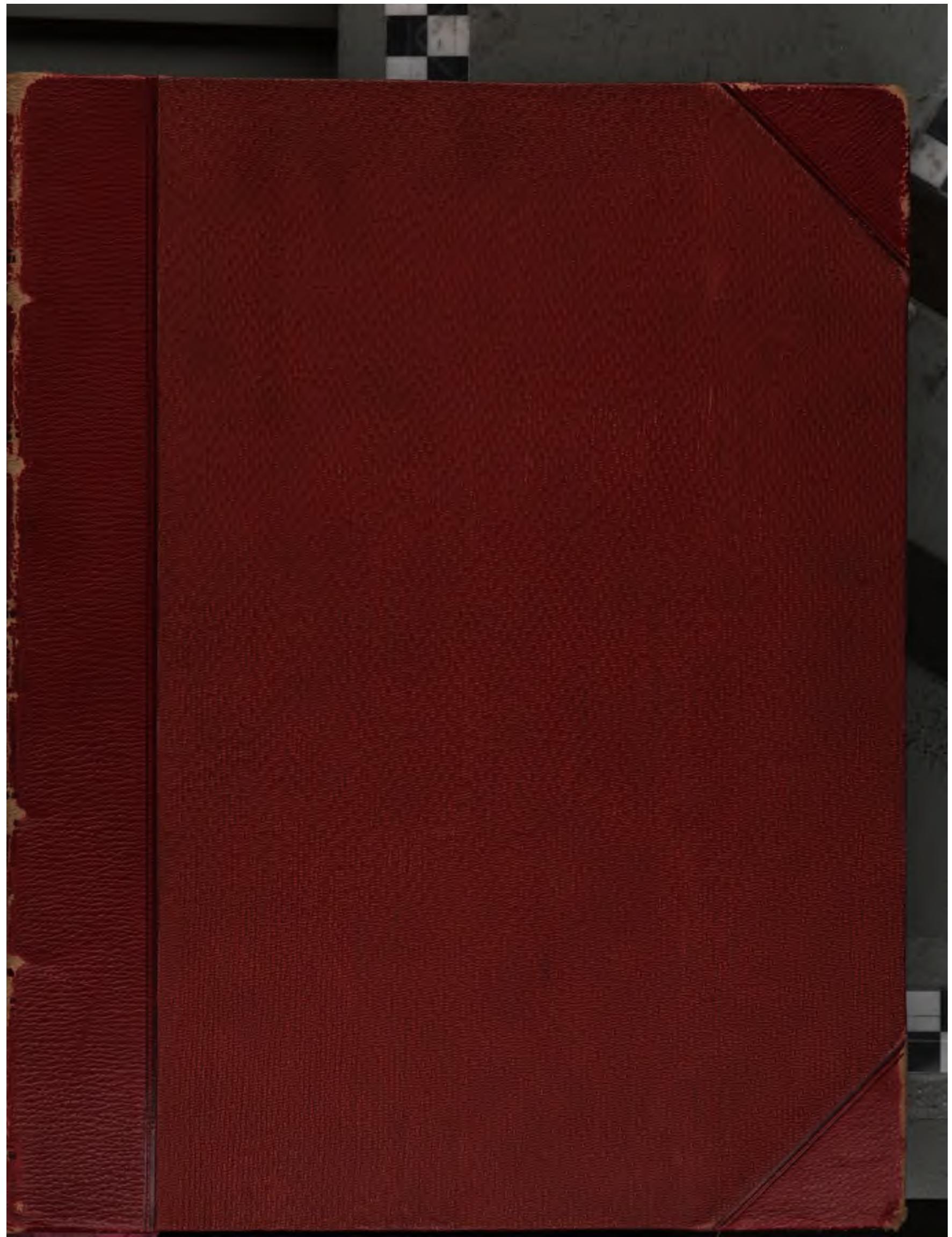
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HISTORICAL NOTICES

OF SCOTISH AFFAIRS,

SELECTED FROM THE MANUSCRIPTS OF

SIR JOHN LAUDER OF FOUNTAINHALL, BART..

ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE.

VOLUME FIRST. 1661—1683.

PRINTED AT EDINBURGH:

MDCCCXLVIII.

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At a Meeting of the Committee of the BANNATYNE CLUB, held
at Edinburgh, on Monday the 10th of April 1848 :—

THE SECRETARY stated, that the HISTORICAL NOTICES selected from the Manuscripts of Lord Fountainhall, were now completed to the year 1688, and extended to nearly 900 pages; and he requested the opinion of the Committee, whether this might not form a suitable termination to the Work; the more so, as the Manuscript Collections of a later date consist almost wholly of Reports of Decisions which have already been printed. THE COMMITTEE approved of this suggestion, and

RESOLVED,—That the HISTORICAL NOTICES OF PUBLIC AFFAIRS IN SCOTLAND, selected from the Manuscripts of SIR JOHN LAUDER OF FOUNTAINHALL, and edited by the SECRETARY, be forthwith completed in two volumes, with an Index of Names, and circulated among the Members of the Club.

Extracted from the Minutes,

DAVID LAING, SECRETARY.

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PREFACE.

THE following HISTORICAL NOTICES consist of Selections from three Manuscript volumes of Decisions, collected by SIR JOHN LAUDER of Fountainhall, previously to his appointment at the Revolution as one of the Lords of Session. His collections of a subsequent date, which embrace a period of twenty years, are equally voluminous, but they do not afford the same kind of materials for illustrating the state of public affairs. “After the Revolution, (he says,¹) upon my entrie to be a Judge, I continued thesse Observations, but restricted my selfe precisely to the Interlocutor, without any inlargements, in regaird President Stairs² told [me,] he was marking the Lords Decisions as he had done formerly.” “In this Manuscript, (he adds,) I resolve, with God’s assistance, to continue the same Observations, but with the like brevity of method with the former; and, if it ware neidfull, it ware easie for me to extend the cases at large from the parties Informations, and other helps beside me, which (God giving leasure) may be afterwards performed by me.” This however Lord Fountainhall never accomplished; and it is much more to be regretted, that he should have abstained from continuing his Historical Observations during the period when he sat as a Member of

¹ MS. volume in quarto, marked PP, commencing with the “Winter Session, 1692.”

² Sir John Dalrymple of Stair, the most eminent of all the Scotish Lawyers, was, in April 1690, created Viscount of Stair. His “Decisions of the Lords of Council and Session,” from 1661 to 1681, were published during his exile in Holland, when he had been deprived of his office of Lord President. (Edinburgh, 1683, 1687, 2 vols. folio.) Having been restored to this office after the Revolution, he died on the 25th of November 1695, in the seventy-seventh year of his age.

PREFACE.

the Parliament of Scotland, until the Union of the Kingdoms. Lord Fountainhall survived till September 1722; and his Library, soon after his death, was sold by public auction.¹ Upon that occasion, his numerous manuscripts must have passed out of the possession of his descendants; and being dispersed, several of them, it is to be feared, are now irrecoverably lost.

The more important volumes of Lord Fountainhall's Decisions, extending from 1677 to 1688, and from 1695 to 1712, in five volumes folio, were acquired, probably in the way of purchase, by the Faculty of Advocates in 1733; and a plan for their publication was approved by the Curators in 1738, as will afterwards be noticed. In 1744, an intermediate volume in quarto, containing Decisions from November 1692 to February 1695, was presented to the Library by Henry Home, Lord Kames. At a later period, a volume in folio, being the earliest of the series, containing Decisions from 1649 to 1678, partly transcribed from other collections, was also acquired by the Library.

From three of these volumes, Robert Mylne,² a writer in Edinburgh, made, between 1727 and 1729, a series of extracts, interspersed with occasional remarks and corrections of his own, strongly indicative of his Jacobitical principles. From Mylne's manuscript, Sir Walter Scott

¹ The sale of his Library forms the subject of a letter of James Anderson's, when sending to one of his correspondents, (probably Sir James Cockburn,) "so much of the Catalogue of my Lord Fountainhall's books as is printed, which, I judge, may be about the third part of his collection. The rest will be printed this week or beginning of next week: the sale will very quickly follow." After mentioning several rare books in the collection, it is added, "If his Grace incline to have any thing that is in what I send you printed, or have hinted, which I believe will be in the sequel of the Catalogue, I intreat your advice speedily, the auction being so sudden."—(*Analecta Scotica*, vol. ii. p. 72.) The letter has no date, but it must have been at the close of 1722, or early in 1723, as it preceded the sale of Sir Robert Sibbald's Library in February 1723.—(*Ib.* vol. i. p. 159.)

² Robert Mylne was a person of very industrious habits, as is sufficiently attested by his numerous manuscripts, transcribed for his own use, with notes and corrections, generally in a very illegible hand. He survived till 21st December 1747, when he died at the age of 103. "He enjoyed his sight and the exercise of his understanding till a little before his death, and was buried on his birth-day." In the *Scots Magazine*, he is said to have reached the age of 105.

published, in 1822, a quarto volume, under the title of “Chronological Notes of Scottish Affairs, from 1680 till 1701 ; being chiefly taken from the Diary of Lord Fountainhall.” Sir Walter’s Introduction will be subjoined to this Preface; but we may remark, that he was mistaken in supposing Mylne to have transcribed a separate Diary of Lord Fountainhall. The first sixty-seven pages of the printed volume are merely abridged notes from the volume of “Historical Observes,” 1680 to 1686 : pages 69 to 266 contain similar notes extracted from two of the volumes of Decisions, 1683 to 1688, which have been used for the present work ; and from page 267 to page 293 exhibit a few passages gleaned from the Decisions, 1695 to 1701. The interpolations and satirical remarks of the old Jacobite may have had a greater attraction in the eyes of his distinguished Editor than is apparently admitted. As these interpolations can now be distinguished by a comparison with the Author’s manuscripts, nearly all of them are added, as a literary curiosity, in the Appendix.

With the view of presenting a more faithful and copious selection from Lord Fountainhall’s existing manuscripts, the task was most appropriately and zealously undertaken by his lineal representative, the late **SIR THOMAS DICK LAUDER**, and the publication, intended to form two volumes in octavo, under the title of “Historical Notices of Scottish Affairs,” had actually proceeded at press to page 304, in 1825, when the misfortunes of the publisher put a stop to the enterprise.

After an interval of several years, the greater portion of Sir Thomas’s transcripts was placed at the disposal of the Bannatyne Club. The Committee having in 1836 resolved upon their publication, it was deemed advisable to change the original plan, by making the selections more extensive, with a closer adherence to the author’s manuscripts ; and likewise, instead of incorporating passages from his Historical Observations with extracts from his Law Manuscripts, to publish the former as a distinct work. This was accordingly printed for the Members of the Club in 1840, under this title, “**HISTORICAL OBSERVES OF MEMORABLE OCCURRENTS IN CHURCH AND STATE, FROM OCTOBER 1680, TO APRIL 1686.**” Unfortunately no trace has yet been discovered of the earlier volume of Historical Observations to which reference in that work is made.

In proceeding with the present publication, the task of re-collating the transcripts, and supplying such additional extracts as were marked for selection, was entrusted to Mr. DAVID MEEK, who, at a very advanced period of life, has accomplished the task, including the Index of names, with a degree of fidelity and laborious care above all praise. It was further expected that these selections would have been accompanied with a detailed Memoir of the Author's Life and Writings; but the recent death of SIR THOMAS DICK LAUDER of Fountainhall and Grange, Baronet, a gentleman distinguished by his literary attainments, has disappointed this expectation. A very brief sketch of Lord Fountainhall's Life may however not be unacceptable in this place.

JOHN LAUDER was born at Edinburgh on the 2d of August 1646. He was the eldest son of John Lauder, a merchant, or more strictly speaking a tradesman, in Edinburgh, by his second marriage, with Isabel Eleis, daughter of Alexander Eleis of Mortonhall. By way of distinction, his father is usually styled Bailie Lauder, and he is mentioned as a leading person in the magistracy of the city; but his connexion with the Town Council appears to have been limited to his holding the office of *Third* Bailie in the year 1657, and again in 1661.¹ His wealth and respectability may however be inferred from the circumstance of his having been proposed as a candidate for the office of Provost, in opposition to Sir Andrew Ramsay of Abbotshall, at Michaelmas 1672.² After passing through the usual course of instruction at the High School, and afterwards in the University of Edinburgh, under James Pillans, one of the regents, Lauder took his degree of Master of Arts, 18th of July 1664.³ With the view of completing his education, and more particularly of prosecuting the study of the Civil Law, according to the

¹ See list of Magistrates in the Historical Sketch of the Municipal Constitution of the City of Edinburgh. Edinburgh, 1826, 12mo.

² See *infra*, vol. i. p. 59.

³ The Theses on that occasion, “*sub presidio Jacobi Pillans*,” appeared in the shape of a broadside, dedicated to Sir Andrew Ramsay, Provost, and the other Magistrates of the City.

general practice of the times, his father sent him abroad ; and the recent discovery of a manuscript journal, written during his residence in France, in 1665-66, enables us to trace his progress.

From this manuscript we learn that Lauder set out on horseback from Edinburgh on the 20th of March, 1665, and reached London on the 1st of April. Having spent six days in visiting the most remarkable objects in the Metropolis, he, along with some companions, sailed down the river to Gravesend, proceeded by post to Dover, crossed to Calais, and thence hastened to Paris.¹ He carried with him a bill of exchange for 400 livres, with a letter of introduction from his father to Francis Kinloch, a merchant settled in Paris. In this letter, of which he preserves a copy, dated at Edinburgh 15th March 1665, his father says, “The bearer hereof, my son, inclining to study the French tongue and the laws, I have therefore thought it expedient to direct him to you, being confident of your favour and caire, intreating your recommendation by a few lynes to ane Monsieur Ale[xander,] Professor of the Laws at Poictiers, to which place I intend he sould go : as also to place him there for his diet in the most convenient house, but especially with one of our profession and religion.” He adds : “I most [must] without vanity or flattery say, hitherto he has not bein inclined to any vice or evill way, and I hope sall so continue.” He was received with great kindness by Francis Kinloch, who advised him first to visit Orleans; and to one of his correspondents he introduced him as “Mr. John Lauder, whose father is my very much honoured friend, his mother my near kinswoman, and himselfe a very hopeful youth, inclined to virtue every way.” On the 28th of July, eight days after he had reached Poitiers, he entered as “pensioner,” or boarder, with Mons. Daillé, with whom he remained till the 24th April following. Lauder confesses, “I was beginning to feell lazy, so that if I had stayed longer in Poictiers I had always engaged in more company, and so done lesse good ; whence I have a sort of satisfaction that I came away.”

We may presume that Lauder, in another note-book, continued his journal until his return to Scotland. From a very minute account of his

¹ His expenses between Edinburgh and Paris he reckoned as having come to £9 sterling.

expenses, contained in the existing volume, we find that having come back to Paris, and taking the route through Cambray and Valenciennes he had visited Bruxelles and Antwerp, in his “voyage through Flanders to Holland.” At Mardyke he took a boat and sailed to Rotterdam. He also mentions his having been at Campvere in July 1667; and an incidental notice in his Decisions¹ shows that he had spent some time at the University of Leyden. In another small memorandum-book of money received and expended from 1671, he has preserved a list of books which he had purchased during several years, with the prices, “since my returne to Scotland from travelling, which was on the 9th of November 1667.”

Lauder was admitted as an Advocate on the 5th of June 1668; and he devoted himself to the duties of his profession with a degree of attention and zeal which could scarcely fail to ensure success. In the beginning of the following year, he married Janet, daughter of Sir Andrew Ramsay of Abbotshall, Provost of Edinburgh.² This alliance, we may readily suppose, proved of advantage in the way of his profession; and may have led to his appointment as one of the Assessors to the City of Edinburgh. In his note-book of expenses we find this entry:—“Upon the 20th of June 1673, I received from William Binning a year’s salary as Tounes Assessor, which he was owing me for the year 1671, wherein he was Treasurer, being 150 lb. Scots, which is about 225 merks.” He had already commenced the practice—which he pursued with great diligence and assiduity for nearly half a century—to preserve a register of Decisions of the Court of Session. “From my admission as an Advocate in June 1668, I began to mark the Decisions of the Lords of Session, not only those I was employed in, (which for severall years were

¹ “15th June, 1678. The University of St. Andrews acclaim to be free from paying Excise for all drink furnished to the Scholars, and that upon the general privilege competent by custom to all Universities. I remember we enjoyed that privilege at Leyden after our immatriculation. Yet the Act 1661, imposing the Annuity and Excise, ordains all Brewers to pay it without excepting what shall be consumed by students in Universities.”

² 1669, 21st January. Mr. John Lawder, Advocate, and Janet Ramsay, married.—(*Register of Marriages, Edinburgh.*)

but few causes,¹⁾ but also others that came to my knowledge, and which Observes take up three folios to November 1688, besides many other law collections in other manuscripts, more in number than these." Notwithstanding this modest admission, he evidently had obtained considerable practice within a few years of his being called to the Bar.

In June 1674, he was one of the Advocates who were "debarred," or excluded from practising in the Court, on the ground of their asserting the right of appeal against "the Lords of Session their sentences of injustice." In August that year, he enters as having "payed for a collation I gave to Sir G. Lockhart, W. Murray, W. Pringle, &c., 8 lb ijs Scots." "Item, spent that 6 of October 1674, that I quit Edinburgh on the King's proclamation of banishment against the debarred Advocates, 29 pence." This sentence of exclusion was reversed in January 1676.² Although he cannot be said to have taken any very decided part in political affairs, Lauder appears generally to have acted along with those who opposed the measures of the Court. This was not the direct road to preferment, yet he obtained the honour of knighthood about the beginning of the year 1681, most probably through his father-in-law Sir Andrew Ramsay's interest with the Duke of Lauderdale. His reputation as a lawyer must have been considerable; and, in December 1681, we find him engaged as one of the eight leading Advocates who were employed in the celebrated trial of Archibald Earl of Argyle, accused of having signed the Test with a treasonable explanation.

Sir John Lauder was returned, along with Sir John Wedderburn of Gosford, as Member for the county of Haddington, in the Parliament which met at Edinburgh in April 1685. This afforded him an opportunity of attending more immediately to public affairs, and enhancing the importance of the Historical Notices which he has interspersed in

¹⁾ At pages 222, 223, and 230, he has specified some of the causes in which he was engaged as counsel in 1679.

²⁾ See his own notice of this event at pages 88 and 90. A more detailed account of this strong measure is given by Professor Forbes, in the Preface to his *Journal of the Session, &c.*, p. xviii. Edinburgh, 1714, folio.

the earlier volumes of his Decisions. He was returned as Member for the same county in succeeding Parliaments until the Union in 1707; and during the reign of James the Second he honourably distinguished himself by his open and zealous attachment to the Protestant faith.

When the Revolution brought a change of Government, and a remodeling of the Court of Session and other judicatories, Sir John Lauder was raised to the bench, and took his seat with the title of **LORD FOUNTAINHALL**, on the 1st of November 1689. On the 27th of January following, he also became a Lord of Justiciary. In 1692, he declined accepting the office of Lord Advocate, from the conscientious feeling he entertained of not being able to justify the conduct of Government in regard to the barbarous massacre of Glencoe. In the later proceedings of the Scottish Parliament, on the subject of the Union with England, he was one of the “Patriots” who were in the minority, and who frequently entered their protest against the Articles of an Incorporating Union of the two Kingdoms.

We may now briefly advert to Sir John Lauder’s domestic history. His lady died on the 27th of February 1686; and, under that date, he thus records his grief:—“At night happened *mors carissimæ meæ conjugis, mihi amarissima et luctuosissima;*” and in the margin he adds, “*Nota, non obliviscenda.*” In the following year, however, on the 26th of March, he formed a second alliance with Marion Anderson, daughter of Anderson of Balram.¹ He appears to have had a numerous family, but several of his children predeceased him. His father was evidently a person of opulence, and had acquired property in different parts of the country. By his first wife² he had a daughter, who was married to

¹ Balram is in the parish of Aberdour. According to some accounts, Lord Fountainhall is said to have married, for his second wife, Margaret, daughter of Sir Alexander Seton of Pitmedden. This error has originated in confounding the father and his eldest son, also named John Lauder, who married Margaret Seton, 10th August 1696. See *Scotish Elegiac Verses*, p. 189. Edinburgh, 1842, 8vo.

² In Nisbet’s MS. Genealogical Collections, (Advocates Library,) she is called Margaret Spire or Spiers. (See *Analecta Scotica*, vol. ii. pp. 10-12.) In the Edinburgh Register of

Colin Campbell of Blytheswood. The Judge was the eldest son of the second marriage;¹ and his brothers-german, William and Andrew Lauder, are mentioned in the Memorial against their step-mother, in the year 1690. This was Margaret Ramsay, whom their father had married as his third wife in 1670. She was the daughter of George Ramsay of Iddington, in the county of Berwick. In an Act of Parliament in 1682, he is styled, “ John Lauder of Newington, merchant burgess of Edinburgh.”² In a subsequent Act of ratification of the lands and barony of Fountainhall, he appears as “ John Lauder of Fountainhall,” and Sir John Lauder, Advocate, is mentioned as his eldest son.³ With the view of gratifying his wife’s vanity and ambition, he obtained, in 1688, the honour of a baronetcy; but not satisfied with this distinction, she succeeded in having the destination of the grant appropriated to his son, George Lauder, or the heirs-male of Margaret Ramsay, his present spouse. Lord Fountainhall, conceiving that such a destination, passing over himself and his brothers of the second marriage, was unjust, obtained, on the 16th of May, an order of Privy Council, that the patent should remain in the Clerk’s hands until it was rectified.⁴ Although this was done with her husband’s sanction, she nevertheless contrived, by misrepresenting his eldest son, Sir John, as disaffected to the late Government, to have the patent in favour of her son George,⁵ passed under the Great Seal on the 17th of July 1688. Having brought an action of reduction of this patent, a new charter, conferring on John Lauder, Senior of Fountainhall, whom failing, to his eldest son, the title and dignity of a Knight Baronet, was obtained 25th

Marriages, we find John Lauder, merchant, and Marion Skeen, were married 28th of March 1639; and on the 17th of October the same year, another person of the same name, John Lauder, merchant, was married to Elizabeth Turnbull.

¹ Isabella Ellis, his second wife, was alive in July 1665, when she joined her husband in granting an instrument of sasine of the lands of Yorston, in favour of Mr. Richard Lauder of Hatton, and Charles Maitland, his son-in-law.

² Acta Parl. Scot., vol. viii. pp. 568, 569.

³ 16th June, 1685, ib. vol. viii. p. 568.

⁴ See the notice at page 868.

⁵ See *infra*, page xxxiii.

of January 1690.¹ The Memorial on this subject, which Lord Fountainhall prepared for the information of the Lord Advocate,² presents such a singular picture of the conduct of this “unjust step-mother,” to gratify her inordinate ambition, that it has been added in the Appendix to this Preface.

The elder Sir John Lauder died at Edinburgh on the 2d of April 1692; and his death was bewailed in a copy of Latin verses by Walter Dennistoun.³ Lord Fountainhall accordingly succeeded to the title of Baronet as well as to the family estates. Of the peaceful tenor of his subsequent life there is not much to relate. The records of Parliament prove his regular and zealous attention to public affairs; and the series of his Decisions continued to the end of July 1712, which show his unremitting diligence, contain a few notices of the death of his children.⁴ The increasing infirmities of age may have occasioned his discontinuance of the reports of cases decided by the Court of Session. After the

¹ Registrum Magni Sigilli, B. 72, No. 81.

² Lord Fountainhall had evidently made some additions to this paper at a later date than 1690, as, in the last paragraph, reference is made to his father's decease, which happened in 1692.

³ “In Obitum laudatissimi spectatissimique viri D. Joannis Lauderi ab Aula Fontana Equitis Baroneti; qui annum agens Octogesimum secundum ex humanis decedens, ad salutis æternæ portum feliciter appulit, 2do Aprilis, 1692.”—See volume of Scottish Elegiac Verses, pp. 84-87. Edinburgh, 1842, 8vo. In the “Collection of Miscellany Poems and Letters, by John Harvey,” Edinburgh, 1726, 8vo, there is included a Latin poem, which he had addressed to the Judge, under this title, “Viro maximoque suspicioendo Domino Joanni Lauder a Fountainhall, Eq. Aurato, Summæ, apud Caledonios, Forensis Curiae Sen. digniss.” It had probably been printed some years previously as a broadside or single leaf. In the same volume we find the Latin Elegy, in 1713, printed anonymously in the Scottish Elegiac Verses, page 189.

⁴ Thus, on the 17th December 1695, “my dear child Robert dying this day, the Observers are the fewer, in respect of my absence for two days, and my other affairs, which diverted my constant attendance that week.” Again, “21 Julij 1696, Tuesday.—My dear son William dying this day, I was absent till his buriall was over.” Mr. Andrew Lauder, second son to Lord Fountainhall, was admitted an Advocate, 27th January 1703; and Mr. David Lauder, a younger son, on the 28th February 1707. (MS. List of Advocates, by Robert Mylne.)

Union he resigned his seat as one of the Commissioners of Justiciary ; his successor, John Murray of Bowhill, having been appointed on the 1st of June 1709. Sir John Lauder, having some time previously resigned his office as a Judge, died at Edinburgh on the 20th of September 1722,¹ and was interred in the family burial-place in the Greyfriars church-yard.²

It has already been stated that, a few years after his death, the most

¹ His son Andrew, (see note 4, p. xviii,) who afterwards succeeded to the title of Baronet, married Isabella, only child and heiress of William Dick of Grange. From Lord Fountainhall's confirmed Testament, recorded 18th September 1723, it would seem that he had previously made a disposition of his property to his children ; as it relates chiefly to the assignment of a bond for 2000 merks, granted in favour of Magdalene Scott, the daughter of Thomas Scott of Milleny, dated, "At Edinburgh this 28th March 1722." It also contains the following very characteristic notice :—"A father in distributing his means among his children is not tyed to the precise neicitys of form : It being enough that his intention and design be clear. By the common law a Testament *inter liberos* had many priviledges : In my practise, both as a lawyer and when a Judge, I ever preferred matter to forms ; and the large extension of clause (tho' in other caices usefull) was both unnecessary among children, and very tedious and wearysome to me who wrote all with my own hand : And friends will sufficiently see what I have designed every one is to gett, which I [pray] God to bless them. And this I thought fitt to declair and explain."

² The following notice of Lord Fountainhall's death occurs in the *Caledonian Mercury* for Monday, September 24, 1722 :—

"Thursday last died Sir John Lauder of Fountainhall, Baronet, one of the Lords of the Session—a gentleman famed for his skill and knowledge, not only in the Civil Law, but in the laws of his country, in which science he has been surpassed by few, and in equity and justice by none. He was likewise, till the Union, one of the Lords of the Justice or Criminal Court, and one of the Lords of Privy Council and Exchequer, and Member of Parliament from K. Charles's II. reign to the above-mentioned Union, which he strenuously opposed ; and in the former reigns he was a bold asserter of the Protestant religion and the liberties of his country ; in all which stations he demeaned and carried himself without the least tach or blemish, &c. As he was a gentleman eminently learned, especially in the law, which will probably afterwards be seen by his writings, so likewise he was a gentleman of extreme moderation and modesty to all who differed from him in opinion. This character of that learned and worthy gentleman is what his country in justice will allow him, and which is not easy for an ordinary pen to express, and would surpass the bounds of this paper.

"This learned person and worthy patriot was interred in his burial-place in the New Grey-Friars Church. Aged 76."

PREFACE.

important volumes of Lord Fountainhall's Decisions came into the possession of the Faculty of Advocates. The Librarian, the learned Thomas Ruddiman, on the 3d of January 1738, submitted to the curators a proposal for printing those Decisions at his own expense; and the plan being approved, a committee was appointed "to revise the said Decisions, in order to the printing thereof." A transcript of the MSS. so revised is still preserved, having probably been made for that purpose, but the plan was not carried into effect. At length, on the 9th of March 1757, Messrs. Hamilton and Balfour, booksellers, represented to the Faculty that they were about to print the Decisions of the Lords of Session, collected by the late Sir John Lauder, Lord Fountainhall, and requested the use of the original manuscripts.¹ This request was granted; but some doubt being entertained respecting the propriety of publishing his "Historical Anecdotes, foreign to the purpose of the Decisions, which might give offence, as they contained some reflexions upon divers persons of these times," a committee was appointed, consisting of Sir David Dalrymple, Mr. George Cockburn, and Mr. William Wallace Junior, "to inspect and direct the publication of these Decisions."

That this committee were at the pains of revising the work, and striking out occasional passages which seemed to reflect on particular individuals, and the motives which frequently actuated the Judges in their procedure, at least during the reigns of Charles the Second and his successor James, is highly probable. Such passages, however, are not the least valuable and curious in his Decisions as illustrative of the history of the times; and his manuscripts have been carefully collated, in the view of restoring what had thus been suppressed. In making the selections, it was no easy task to form any definite plan, as so much must depend upon individual opinion. Along with such cases as are contained in the printed collection of Decisions, from 1678 to 1688, as seemed

¹ A collection of "Informations," or what are usually called Session Papers, consisting of several very thick volumes in folio, (chiefly in manuscript,) are preserved in the Advocates Library, and appear, from the Minutes of the Curators, to have been presented at different times by Lord Fountainhall.

to belong to general history, it was judged expedient to include not only whatever articles had remained unpublished, but the whole of the proceedings of the Criminal Court and of the Privy Council which were recorded in his manuscripts during that period. The present Selections terminate with the year 1688. Three memorandum-books in which Lord Fountainhall inserted his Notes of Decisions, from November 1689 to November 1692, have not been preserved. Those of a subsequent date, commencing with the Winter Session 1692 to the end of July 1712, are of considerable bulk; but not being intermixed with historical notices or remarks, they contain comparatively little to interest a modern reader, and they have been very fully printed in the two volumes of Decisions.¹ If at any subsequent time some of his missing MSS. should be discovered, another volume of Selections, to include his early Journal, and extracts from his smaller note-books, might not be undeserving the attention of THE BANNATYNE CLUB.

On the literary or judicial character of Lord Fountainhall, it is unnecessary to enlarge. One of his contemporaries says of him—"The publick and private character of this excellent Judge are now so well known, that I need say no more of him, than that he signalized himself as a good patriot and true Protestant, in the Parliament of 1686, in defence of the Penal Laws against Popery. This self-denied man hath taken no less pains to shun places that were in his offer, than some others have been at to get into preferment: Witness his refusing to accept a patent

¹ This work, which appeared at Edinburgh, 1759 and 1761, in 2 vols. folio, was announced in the newspapers of the day as preparing for publication under the authority of the Faculty of Advocates. It bears the following title:—"THE DECISIONS OF THE LORDS OF COUNCIL AND SESSION, from June 6th 1678, to July 30th 1712. Collected by the Honourable SIR JOHN LAUDER OF FOUNTAINHALL, one of the Senators of the College of Justice. Volume I. Containing also the Transactions of the Privy Council, of the Criminal Court, and Court of Exchequer, and interspersed with a variety of Historical Facts and many curious Anecdotes. Published from the Original Manuscript, in the Library of the Faculty of Advocates, at their Desire. EDINBURGH: Printed for G. Hamilton and J. Balfour. M.DCC.LIX." Pp. 830. The Editor's name is not mentioned, and the volume contains no prefatory matter. Volume II. bears a similar title, with the date "M.DCC.LXI." Pp. 790.

in the year 1692 to be King's Advocate, and the resigning his place of a Lord of Justiciary after the Union, which her Majesty with reluctance took off his hand. In short, his Lordship is (what I know by experience) as communicative as he is universally learned and knowing. He hath observed the Decisions of the Session from November 1689, till November 1712: Which I have seen in Manuscript: but his excessive modesty can't be prevailed on to make them publick."¹

Lord Woodhouselee has pronounced the following eulogium, which may also be quoted, as conveying a brief but just character of the author:—"Sir John Lauder of Fountainhall was a profound lawyer, and a man of considerable learning and knowledge of human nature; having read much, and studied the character of mankind. As a Judge, he applied himself with indefatigable assiduity to the discharge of his official duties; and has left a very honourable memorial of his talents and industry in his Collection of Decisions, which record the proceedings of the Court of Session from 1678 to 1712, and incidentally note the transactions of the Privy Council of Scotland, with those of the Courts of Justiciary and Exchequer—a work compiled with so pleasing a mixture of the anecdotes of the times, and so much characteristic ingenuity of observation, as to render its perusal agreeable, even to the general reader, and valuable to the historian, independent of its utility to the professional lawyer."²

August 1848.

¹ Preface to the "Journal of the Session, containing the Decisions of the Lords of Council and Session," by William Forbes, Advocate, Professor of Law in the University of Glasgow: p. xliv. Edinburgh, 1714, folio.

² Life of Henry Home, Lord Kames, vol. i. p. 44, 8vo edit.

APPENDIX.

N O. I.

SIR WALTER SCOTT'S INTRODUCTION TO LORD FOUNTAINHALL'S CHRONOLOGICAL NOTES OF SCOTTISH AFFAIRS.

THE original of the following Chronological Notes is a small duodecimo Manuscript volume, preserved in the Advocates' Library, and commonly called Lord Fountainhall's Diary. It is superfluous to make any remarks on the life or character of that eminent lawyer and upright man, Sir John Lauder of Fountainhall, as the public have been encouraged to expect a full and authentic account of him from his heir and representative, Sir Thomas Lauder Dick. It is only necessary here to observe, that he was a constant, close, and singularly impartial observer of the remarkable events of his time; and, while his rank and character gave him access to the best information, he displayed much shrewdness in digesting it, and appears to have had the habit of committing most remarkable particulars to writing. Besides the voluminous collection of his reported Decisions, of which two close printed folio volumes are but an imperfect extract, this learned lawyer was in the constant custom of registering in his note-books the events of his time, of which the following pages form an example.

It is to be regretted, that we do not find the Diary in the condition in which it was left by Lord Fountainhall;¹ but it appears, after his death, to have fallen into the hands of Mr. Milne, Writer in Edinburgh, who erased some passages, inserted others, and interpolated the whole—sometimes with the purpose of elucidating, sometimes with that of correcting the text—with such perverse assiduity, that, after many endeavours to that effect, it was found impossible to separate them, without destroying the sense of the whole work; so that the Editor, like Martin in the Tale of a

¹ [See *supra*, p. xi.]

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Tub, was compelled to desist from his intended work of reformation, in consequence of the corruptions having been so closely and inseparably interwoven with the text, that it was scarce possible to obliterate the former without destroying the latter. In general it may be observed, that Lord Fountainhall, who was created a Judge in the year succeeding the Revolution, was a sincere friend to the principles which brought about that great event, although he appears not to have been a violent party-man, either in politics or religion. Mr. Milne, on the contrary, was a violent Jacobite, and most of his interpolations go to express his partial feelings in that character. The Editor has marked several of these passages by a note, where the sentiments or prejudices of Mr. Milne seem peculiarly intrusive.

Of Mr. Milne¹ the Editor knows nothing, except that he seems to have followed the profession of a writer, and to have been related to Sir Robert Milne of Barnton, mentioned pp. 198 and 231, then a man of influence, and concerned with the revenues of the city of Edinburgh. The Diary seems to have fallen into Milne's hands after Lord Fountainhall's death in 1724; and it is but fair to him to state, that he appears to have had no purpose of passing his alterations for a part of the text, but only that of correcting and adding to it in his own name. His remarks are sometimes both shrewd and sarcastic; and though they may be considered as impairing the historical authenticity of the work, they rather add to than diminish its interest as a picture of the times.

About the time of the Revolution, Sir John Lauder seems to have fallen under the suspicion of the higher powers. Both his *servants* (a phrase which probably means his clerks) were arrested,² and he seems to have discontinued his Diary. Nevertheless he appears to have kept such notes as enabled him to draw up a curious account of that remarkable transaction, which is now in the Advocates' Collection, and which the Editor may one day give to the public, unless it be presented to them by some abler hand.

ABBOTFORD, 7th March 1822.

¹ [See *supra*, p. x, note 2.]

² [At page 719, this is said to have been on the 1st of May 1686. In his *Historical Observes*, page 249, Lauder says, in April, when adding, evidently at a later date, the explanation of his having discontinued his "Historic Remarks till the Revolution."]

N O. II.

INTERPOLATIONS BY ROBERT MYLNE IN HIS EXTRACTS FROM
FOUNTAINHALL'S MANUSCRIPTS, AS PUBLISHED BY
SIR WALTER SCOTT IN 1822.

[*The passages printed in Italic types contain Mylne's additions.*]

I.

IN THE VOLUME OF HISTORICAL OBSERVES, 1680-1686: PUBLISHED IN 1840.

Page 12, line 18. “In November 1680, Mr. James Lundie, &c., some thought the Bishop was displeased with the freedome he sundry tymes used. *It was thought because Paterson, the Bishop of Edinburgh, took umbrage at his freedom of speech in the pulpit anent the Government.*”

Page 44, line 27. “He (the Duke of Rothes) gave himself great liberties in all sorts of pleasure and debaucherie, *particularly with Lady Ann, sister to the first Duke of Gordon, whom he took along with him in his progress through the country, with hat and feather,* and by his bad example infected many of the nobility and gentry.”

Page 62. “Count Coningsmark, a Swede, (*who cockled King George of Hanover, after King of Brittane by usurpation, and was murdered by him,*) hyred several rogues to murder Squire Thyne,” &c.

Page 74, line 14. “and got all from him (the Duke of Lauderdale) she (the Duchess) could expect, *and was glad to be quyt of him.*”

Page 115, line 30. “Mistris Euphame Scot, (*after Lady Eyemouth, and spouse to Wynram of Eyemouth, who is now broken, and she dead,*) with whom,” &c.

Page 130, line 19. “he had obtained a gift from the King out of that fyne for £16,000 sterling, *whereof his heirs never got a groat to this day, (1729,) albeit he transacted it for the half.*”

Page 146, line 19. “had very near shot Douglas himself dead, had not the Whig’s carabine misgiven, (*the more pitie, considering what a vile traitor the Collonell after proved to King James the Seventh.*)”

Page 158. The King and Queen’s coronation.—“*Nota.—The Crown of Scotland is not the ancient one, but one cast of new by King James the Fifth.*”

Page 176, line 14. “the Prince of Orange offering to ship the three Scots regiments for his Majestie’s assistance, (*which he, like a villain, as the Dutch, his masters, wes.*)”

Page 181, line 3. “fyre a pistol or two at them, (for he had three on him.) —*he fired a pistoll at them, for he had three on him, whereof I have two, which I got from his son-in-law, the second Marquis of Lothian.*”

Page 181, line 13. “he fell in the river, (*here the curses of his many creditors whom he defrauded are brought to remembrance,*) and in the fall cryed, Ah, the unfortunate Argyle.”

Page 182. Collonell John Ayliff.—“*He dyed composedly, and prayed for the King, about September or October 1685. He is not put into the Whigs’ Martyrologia, because he prayed for the King.*”

Page 190, line 25. “that he (Argyle) would ruin all, &c.—*James Stewart, that arrant rogue, (after Advocate to Queen Ann,) son of that nefarious villain, Sir James Stewart, sometyme Provost of Edinburgh, a bitter enemy, (in conjunction with the Marquis of Argyle,) said, this Argile would ruin all in his going to the Highlands with his ships and forces, wheras he should have landit in Galloway. Stewart was to come with him, but when he understood he was to land in the Highlands, he refused to accompanie him.*”

Page 190, last line. “An English widow in Amsterdam, called Mrs. Smith. *Quæritur, Whether or not this was the widow that Burnet, Bishop of Sarum, married?*” [Sir Walter Scott adds this note.—“This malicious query, which Mr. Milne has inserted, may be safely answered in the negative. Burnet married Mrs. Mary Scott, a Dutch woman, but descended of an honourable Scottish family.”]

Page 196, line 7. “one of his grandchildren, *eldest son of Lord Lorne, after Duke of Argyle.*”

Page 210, line 2. “purge her therof. *The Prince of Orange prompted him (the Duke of Monmouth) to come over, that he might fall in the expedition, and thereby make way to his usurpation to the Crown of England, which he knew he could never obtain while he lived.*”

Page 211, line 4. “The Bishop of Winchester. *His name was Peter Mew; he dyed 9th November 1706, aged 89.*”

Page 216, lines 5 and 6. “Particularlie, Leslie Earle of Leven, Leslie Lord Newark, *neither of them have left any heirs male, and both of their estates near gone;* Lieutenant-General Holburne, *whose estate is quite sunk;* Montgomerie, *extinct;* Monmouth, *beheadit;* Monro, Drummond, *extinct.*”

Page 244, line 11. “The Chancellor married Lady Mary Gordon, relict of Urquhart of Meldrum, *his last wife, daughter of Drummond of Machanie, having dyed in September 1685*; whereupon Earl Middleton made a satyre shewing that the Chancellor and his brother Melfort were the truest to their whores, (*for it was said the Chancellor lay with Meldrum's wife, and his brother with [here is a blank in Mylne's MS.], both whom they after married,*) and falsest to their God.”

II.

IN VOLUME SECOND OF THE PRESENT HISTORICAL NOTICES.

Page 481, line 14. “The Chancellor opposed it, alledging, he way-laid him, (*which was true,*) and then proditoriously murdered him.”

Page 488, line 5. “when stabb'd (stick'd) in August 1679, by his wife Christian Hamilton, (*his first lady's neice,*) relict of Mr. Nimmo, sometime Collector of Aberdeen.”

Page 489, line 21. “*Nota.—His (James Lord Forrester) voting at the election of the Commissioners for Stirlingshire, was a passing from his Peerage.*”

Page 498, line 2. “James Hamilton (*he was after Lord Pitcaitland.*)”

Page 501, line 20. “they had offers of their lives, but ware so foolishly pertinacious as to refuse it.—*They were offered their lives, but refused the same, being ingrained Whigs.*”

Page 520. [No. 198. March 12, 1684. “Duke Hamilton's action of non-entry against John Eleis, for his lands of Eleiston.” See this case in the printed Decisions, vol. i. p. 280.] “Duke Hamilton obtains a decret against Mr. John Ellies of Ellieston, for the lands of Ellieston being in non-entry. And Mr. John had gotten from the Usurper, charter and saising, when the estate of Hamilton was sequestrate, could not defend him against the nonentry. *Nota.—It was talked that Mr. John Anderson, Writer to the Signet, who married Ellies' daughter, betrayed his father-in-law to the Duke for filthie lucre, which is all gone; and has little peace with his wife and children.*”

Page 520, line 23. “York had a very bad opinion of him, [Sir Hugh Campbell of Cessnock,] and suspected (*not without good grounds*) he was upon the late English phanatique plot.”

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Page 521, line 26-27. “*forfaulter of Hugh Campbell of Cesnock. I believe he was reallie guiltie.*” [The following remark is added upon this by Sir Walter Scott:—“The trial of Campbell of Cesnock was one of the most infamous proceedings of the period; the court drawing forward every thing that could make against the accused. The note subjoined is that of Milne, and in his usual style of partiality.”]

Page 542, line 7. “*Colonell James Douglas, &c., he after proved an arrant traitor to King James the Seventh; and his memorie is cut off.*”

Page 579, line 4. “*The Councill thought it reasonable, but Queensberry, the Treasurer, opposed it; and he was in the right for so doing, alleging,*” &c.

Page 594, line 18. “*his marrying Sir Archibald Johnston of Warriston, that arch-traytor, his daughter.*”

Page 595, line 5-6. “*He was brought down in a ship, with many other traytors, 14th November 1684.*”

Page 617, line 23. “*The Privy Counsell commissionats Lord Drumlanrick, son to the Treasurer, who after proved a vile tratour.*” . . . line 27. “*faltered in the delivery of his speech to the King; but failed after more grosslie in his villanous betraying his Master, when forced to abdicate his Crown, for which he made a most ignominious exit, having died of vermine, Jully 11, 1711.*”

Page 688, line 11. “*The Earle of Perth, Chancellor, arrived at Edinburgh, having come post from London with Claverhouse, Balcarhouse, &c. Nota.—There is no word of Claverhouse since the 16th Aprile 1685, either as being against Argyle in his invasion, or otherwise. But, no doubt, when he was at Court, he has been active against Queensberry; and it's probable, being at England, he might have been at Monmouth's rebellion.*”

Page 704, line 12. “*The King's Advocate, (Mackenzie,) seiming to despise the similie, the Chancellor took it very hot, as a contempt. So from this the Advocat's fall is intended, because he would not be for taking off the Penal statutes; and makes way for introduction in his post, that arch-traytor, Sir John Dalrymple, who was felo de se the very same night he had a great hand in closing the hellish Union of the two Kingdoms, in 1707.*”

Page 704, line 18. “*Duke Hamilton and the King's Advocat (Mackenzie) falling hot, the Duke rudely threatened to cause crop his ears, tho' he was ane Officer of State. Here this cowardly Duke, perceiving the Advocat's apparent fall, and with him his great enemy Queensberry, Treasurer, baselie insults him, albeit he was the brightest man in the nation.*”

Page 709, line 18. "John Weir of Newton, (*who was an arrant Whigg rogue.*)"

Page 713, line 3. "Thus fell a great proud man, (Queensberry,) little regrated. *This has been minded by Queensberry his son and brother after the Revolution, the last two having turned egregious traitors to King James VII., and betrayers of him and his intrest.*"

Page 715, line 12. "*This was cajolling him (Queensberry) to serve his interest in Parliament.*"

Page 723, line 9. "The King's letters are read, laying aside *the admirable Sir George Mackenzie, the King's Advocat, because he was against taking off the Penal Laws;* line 11. and Sir William Bruce (*it seems the last has turned malcontent, because he got not the Mint, which was given to Lord Maitland.*)"

Page 726, line 2. "Ramsay, Bishop of Ross, (*whose sister Provost Milne had married, a creature of Duke Hamilton's, and as Dr. Bruce (Bishop of Dunkeld) was of Sir William Bruce's, who was sore dissatisfied for being disappointed of the Mint.*)"

Page 728, line 4. "that Sir George Lockhart, President, officiat as *King's Advocat, in place of the admirable Sir George Mackenzie, laid aside as above.*"

Page 742, line 22. "for defamation, (*for which he wanted not reason.*)")

Page 744, line 18. "the Lord Lorne, for paying his annuity, (*having turned Popish.*)")

Page 759, line 5. "But the third carried it, viz., Sir Robert Milne of Barneton, George Hamilton, a collector, to whom Barneton had sold his lands of Binny and Blaikburne, and after, *his lands of Barntown; albeit he had bein Hamilton his raiser, by first geting him into the troop of Guards, furnishing horse, armes, &c., then making him a surveyer, thence collector at Glasgow, where he collected money wrongously, not entering the goods in the books, but putting the money in his own pocket; yet nothing would satisfy him but to have all the raiser's lands and estates, and at the last forced for sanctuary to Holyroodhouse Abbey. But at last this Hamilton, for this maltreatment of Sir Robert Mylne, before his death (which happened 26th October 1726) was a common begger on the streets of Edinburgh himself frae gentlemen; and after his death, his lady, who was as proud as Lucifer himself, and a great phanatick, turned Papist for bread. She was daughter of Sir James Balfour of Denmill.*"

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Page 766, line 3. "One Gordon, &c.—*Mr. Thomas Gordon (son to Boig-holl) made Professor of the Oriental Tongues in the Colledge of Glasgow, &c. In 1689, he discovered King James's letters, that he brought frae him out of Ireland, to the government.*"

Page 772, line 20. "Sir John Dalrymple, that treacherous knave."

Page 774. "Adam Scot, &c. [Decisions, vol. i. p. 441.] *I judge he was the Advocat's Bar Keeper, and concerned in Musselburgh Milns.*"

Page 792, line 28. "Doctor Gilbert Burnet, (a notorious rogue, who had been undermineing the King, as also his brother King Charles II., at severall foreign Courts.)"

Page 807, line 2. "Nota.—*He was said after to be felo de se.*"

Page 809, line 1. "demolished in the Rebellion, as they called our Reformation, which, in effect was no less than a deformation, by casting down many religious places."

Page 815, line 30. "Mistress Anne Gilmor, daughter of umquhile Sir John Gilmor, sometime President of the Session, (who wes got with child by Lord Ross; the child being a lass, and is living 1729,) she was brought to-bed in the Highlands; but she denyed the lass to be hers, (albeit most true,) raised criminal letters against Kat Lichrone, spous to Henry St. Clair of Larvig, for defaming her in her chastitie. Cockburne raised a recrimination against her for reatortes, &c. The affair was agreed befoir furder heiring, 26th August 1687."

Page 816, line 25. "The Master of Balmerino, (who had a Miss called Jean Gray.)"

Page 819, last line. "No doubt there hes been humor betwixt Arran and Mel-fort, that has given rise to this report, Arran being the Court Hector then."

Page 828. "The Dutchess of Lauderdale [see the case in Decisions, vol. i. p. 480, which Mylne thus abridges:] pursues the Earle for ane absolviter from the Duke's English debt. He alleages she wrott letters to Murray of Glendoig, late Register, that she should pay the samen; which letters Hugh Ross, Glendoig's servant, took out amongst his papers, and offered them to the Earle for 1000 merks. But the Dutchess hearing thereof, sent for Ross, (with whom she had formerly casten out,) and offered him more; whereupon he gave her up the letters, (which would have clearly proved her perjured,) and, in place of giving him any money, [she] burnt the letters, and caused him to be beat down stairs by her servants. I myself borrowed the money at Sir Robert

Myln's desyre, which Ross should haue gotten from Lauderdale, and brought the same to the Earle; but they hadde lett Ross go away before I came with the money, albeit I stayed not three quarters of ane hour; and it was thought Sir John Dalrymple had treacherously past down to the Dutchess, and caused her send for Ross; and Ross was imprisoned for trincating and falsehood to both. 18th November 1687."

Page 834, line 4. "were on the scaffold, (*this I, Robert Myln, writer, saw with my own eyes.*) Some alleged his mother was concerned in the murder, and that he had lyen with her himself."

Page 836, line 24. "This was done by influence of Lockhart, President, on account Aberdeen had married his relation."

Page 842, line 21. "that James Steuart, (*that treacherous villain, as his father was,*) called Sir James Stewart, Provost of Edinburgh, (*the time of his rebellion against King Charles First,*) had used."

Page 847, line 6. "James Stuart, the rogue."

Page 848, line 4. "I went to Fyffe to Abbotshall's buriall," &c. [Myln alters this as follows:—"Sir Andrew Ramsay of Abbotshall, some time Provost of Edinburgh, Lord of Session, dyed 17th January 1688, at Abbotshall, where he was buried. Sir John Lauder of Fountainhall married a daughter of his to his first Lady."]

Page 850, line 10. "(the Queen) being oft tymes six houres on her knees at prayers altogether; (*a great lie, she being so [too] much tane up with Court affairs to have so long tyme for private devotion.*)")

Page 862, line 18. "Corstorphin (*Lord Forrester*) raised ane reerimination against Mr. George, that in the year 1679, (*in which year the Lord Forrester's father was killed by his Lady, who was his first Lady's neice, and daughter of Hamilton of Grange, and relict of ane Nimmo, a Collector, for which she was, upon 12th November 1679, heheaded,*) when this King was here."

Page 866, line 10. "Leivetenant Collonell James Murray, (*who, I judge, had a post in the Castle of Edinburgh.*)")

Page 868, line 5. "His Majesty conferred the places of Harcus and Edmeston, in the Session, upon Mr. Alexander Swintoun of Mersington,¹ and Lewes Gordoun of Auchentoull, divydeing his favours

¹ "Lord Mersington was a younger brother of the Swinton family. Balcarres calls him the fanatic judge; and, in addition to the equipage here described, says he was 'as drunk as ale and brandy could make him.'"—[Note by Sir Walter Scott.]

betuixt the Presbyterian and the Papist; and *Lord Balcaskie* (*Tarbet's son-in-law*) got Harcus his place in the Criminall Court; and it's observable that *Mersington headit the rabble which attacked the Abey on the unhallowed Revolution*, and had a great broad belt about his midle, and a pole-ax in his hand. There was a woman also, who had born a child to him in adultery, was execute therefore. And he was in company at Leith with *Mr. Scott, Sheriff-Clerk of Edinburgh*, who, in their up-coming, slew one *Philip Alexander*, in St. Andrews, a pur-blind man, 1699, for which *Scott is remitted*, 1704; but he being forced to flee in the interim, *Alexander Belshes*, brother to the Laird of *Tofts*, got his place, Sheriff-Clerk of Edinburgh, for his behoof; but after trickt him out therof, and kept it to himself, which broke *Scott's heart*. *Belshes of Tofts married one of the daughters of Mersington*, who is long agoe broken; and *Swinton of Lochlan another*; and a third married *Bruce of Kennet*, who, with his drunken billies, insulted the Town-Guard of Edinburgh, and killed three of them, viz., *Henry Linkletter, Alexander Simson, and Colin Campbell*, for which he has a remission on 2d May 1691. He killed them upon the 4th May 1690. *Mersington had another daughter married to Sir Alexander Cumine of Culter*, also dead and broken; another to the rake and egregious cheat *Charters*, who has only a daughter, married to the Earle of *Weyms*. *Lord Mersington*, he had two or three sons, whereof [is] no memorie. He acquired *Mersington*, vis et modis, from the true heir thereof, *Ker of Mersington*, and it's gone from him. (His Lady was *Alison Skeen*, oldest sister of the last *Halyards*, whose mother was daughter of the said *Ker of Mersington*.) The Lord Mersington died suddenly on 21st July 1700, his Lady having found him dead in his bed when she awaked in the morning."

Page 873, line 15. "James Stewart, that treacherous traytor, was adjoyned;" and page 875, line 27; "James Stewart, that egregious villain."

Page 884, line 6. "yet, by the Prince of Orange's arrivall then in England —yet, by the unnatural usurpation of the Prince of Orange, no business was done, save delyverances on a few bills."

"The King was forced to abdicat his kingdomes by the foresaid Usurpation. The King of France before fully informed him thereof, and offered to send forces to his assistance, which he refused, (the greater fool he!) not believing his subjects would have joined the Usurper. (See Fergusson's History of the Revolution, in laigh press, p. 18.)"

NO. III.

MEMORANDUM FOR SIR JOHN LAUDER.¹

To raise ane libel at Privy Council at the instance of Sir J. D[alrymple,] his Majestie's Advocate, for, &c., and of Sir John Lauder, Mr. William and Andrew Lauders, his brothers-german, against Margaret Ramsay, their step-mother, George Ramsay of Idington, her father, Doctor Robert Trotter, her brother-in-law, and their wifes, and J[ohn] L[auder], husband to the said M. R., &c., for their interesses, making mention and complaining, that, albeit by the laws of God, Nature, and Nations, it be ane crime of ane high nature for ane Wife by herself, or her friends, insolently and imperiously to abuse and overawe her Husband, and by presumptuous force and mastery to impose things upon him downright contrary to his honour and inclinations; and that the defaming and oppressing of his Majesty's leidges, and the sowing discord betwixt parents and children, and the robbing persons of their birth-right, and the depriving husbands of the free disposal of the properties and the liberties of their persons, are crimes by all laws, divine and humane, highly punishable:—

Yet true it is, that albeit John Lauder of Fountainhall hath lived to ane great age, and born several honourable offices in the public, and gained reputation from all degrees of persons during the whole tract of his life, and that the complainers, his children of the first marriage, had never done anything to merit his displeasure, nor unworthy in itself, but had carried always dutifully and obediently to him; yet the said Margaret Ramsay, his present wife, has done what in her lay to tarnish and blacken, now in his old age, that honor and reputation he had so justly gathered, by stirring him up *delinimentis novocalibus* against the complainers, descended of his own bowels, in so far as shee, having wearied him by her incessant importunity and ambition for many years, to procure and accept ane Knight Baronet's patent,

¹ Copied from the original in Lord Fountainhall's hand-writing in the possession of the late Sir T. D. LAUDER. The paper is marked on the back by Lord Fountainhall as follows:—"MEMORANDUM FOR SIR JOHN LAUDER ANENT THE PATENT, AND ALSO FOR A LIBEL AGAINST, &c., 1690."

APPENDIX.

and he never imagining that it was to be taken in any other terms but in favours of himself and the complainers, his heirs-male, yet by the fraudulent assistance of the said George Ramsay and Doctor Trotter, she caused frame the said patent to descend after her husband's decease to George Lauder, her son of the second marriage, a child who as he can have done nothing as yet to merit it, so has no estate requisite for supporting such ane dignity, (all that is provided to the whole children of the marriage being but fifty thousand merks;) albeit the Mother resolved to sacrifice the other five children for agrandizing him, yet the whole is no competency as such ane honor requires; and so soon as the said John Lauder understood this cheating contrivance of his wife and her friends, he did openly declare his dis- assent thereto, and gave the complainer ane declaration under his hand disclaiming the same, and appointing a new patent to be obtained, running in the natural channel of his lineal heirs: and her relations above mentioned were so ashamed of what was done, that they declared, in presence of many famous witnesses, that it was [most] reasonable it should be altered, and swore horrid oaths they should never oppose the same: Notwithstanding of all which, the said Margaret Ramsay, without any regard to her husband's honour and inclination, so frequently reiterated both by word and writing, and fully resolved to have that patent to descend to her son, whatever it should cost; she came to the house of Mr. Robert Lauder (in whose hands the said patent was put in order to be rectified) in the month of May 1688, at eleven o'clock of night, with several other of her accomplices, intending by force to have taken the patent from him, and threatening to see his heart's blood if he did not deliver it presently; and tho' by order of Privy Council, to prevent their violent courses, it was ordained to be put in the Clerk's hands¹ till the affair were heard; yet in open affront and contempt of the Council's authority, she procured ane new patent from Court, by misrepresenting the complainer as ane enemy to the late King James, and that therefore any honour bestowed upon his Father ought not to descend to him: and so high did her malice run, that she made the conception of the patent to terminate on her four sons, though there was never ane patent but it fell to all the sons of the first person, failing of one always to the other; and to fright her Husband to comply with her unreasonable and unjust demands, she threatened that she would starve herself if that

¹ See the notice to this effect at page 868.

patent was not taken to her Son, and that she would kill herself if even she saw any of the complainers come near their house; and if he did not absolutely discharge them his presence, most wickedly projecting by this means to effectuate her covetous designs of ingrossing all her Husband's estate, and of obtaining contradictory and dishonourable papers from him, that for peace sake he might declare in favours of her Son, and so working upon his tenderness that she might not put violent hands in herself, nor execute these dreadful threats she had uttered in her frantic transports. And when the Earl of Lauderdale and others had come to the said John Lauder to speak in behalf of the complainers, and that he had told him that he could not but love his children of the first marriage, for they had never disobliged him, and that he was convinced it was most unreasonable to rob them of their primogeniture, and cast ane blot of infamy on them without any cause, she was so enraged at this fatherly declaration, that she tore the clothes of her body, and the hoods of her head, and swore fearful oaths that she would drown herself and her children, and frequently cursed the complainers, and defamed and traduced them in all places, and threatened that she hoped to live to see them all rooted out, they and their posterity, of the face of the earth, and her children would succeed to all; and she studied by all the diabolical wits that feminine malice could inspire to alienat the said John Lauder's affection from his children, and to sow discord and division betwixt them, and by dread and terror to fright him from converse with them, tho' that be the greatest satisfaction of aged parents: And when she could not get them absolutely debarred from paying that natural respect and duty they owed to their father, yet to render the converse and freedom altogether ineffectual, and to make him ane close prisoner, she constantly intruded herself in the room, that she might hear all that passed, and block up all information of her tricks from coming to his ears, and refused to remove when her husband bade her, but most imperiously, insolently, and impudently, followed him to other rooms, where he retired to shun her, depriving him of that natural liberty and freedom every man ought to enjoy in his own house, wherein all lawful things as he had the power of commanding, so it was her duty to obtemper and obey, seeing by the law of God and the statutes of this land, the husband is lord, head, and ruler over his wife; and it was a subverting the law of nature in her for to assume the government and power over her husband, and to preclude him from all means of knowing the truth, besieging, disquieting, and mo-

lesting him perpetually with lies of his dutiful children, to that light that it made him oft declare with much sorrow, that her carriage made him weary of his life, knowing that the easiest way to compass her hellish design was to debar the complainers from paying the natural duty to their father, and then to misrepresent them, and incense and stir him up against them, she and her friends having access at all hours, and dividing themselves, so that he should never be without one or other of them as ane spy and sentry, thereby they had opportunities of instilling into him what they pleased; and particularly that all his estate was little enough to bestow upon her son, who was to succeed him in the title of knight-baronet; whereas the laws of all nations hath, for securing husbands against such imperious women, declared all donations made by husbands to wives revocable, and which in no case was never more necessary than here, the said John Lauder being more liable than any man to their wicked and unjust suggestions, he being of a great age, and one who came not abroad out of his own house, and so is continually obnoxious and liable to their villainous threats and impressions, whereas all men should be left free in the disposal of their own; and the common law hath declared imposing in this case punishable with the forfaulter and omission of what was so fraudulently acquired, and made them incapable of any benefit they had extorted by such concussion; and without such caution mankind could not be secured, nor the honor and interests of husbands kept up and preserved against the invasions and encroachments of their younger wives. And the complainers, as children of the first marriage and creditors, are not to be defrauded by subsequent children, who are less favourable in law than they; especially where the matrimonial provisions are more than implemented to these younger children; and George Ramsay's their grandfather's design, is to get himself and his friends to be the only managers of their affairs, because he has the greatest part of their means in his hands as debtor, that so he may dilapidate and embezzle what he pleases, and exclude the complainers, who will be the only persons who behoved to look to the welfare, standing, and preservation of these children, and for recovery and seeking in of their means; and for carrying on this design, she stole his keys, and broke up her husband's cabinets, and searched his whole papers, and forced him to alter his testament, and insert only her own friends as tutors to her children, who on the event, will find their interests more tenderly espoused by the complainers than by her pretended

friends, who are truly their indirect parties, having their means and estate in their hands: And if riots of this nature were in the least connived at, no man, either as to his goods or writs, would be secure against the insolent rapines of ane wife, having easier opportunities then any other; and as if all thir practices were not sufficient, the said Margaret Ramsay has these many years pilfered, squandered, and given away the said John Lauder his means and estate, for maintaining her father, and the said Doctor Trotter, her brother-in-law, and their families, in bed, board, and in merchant counts and clothing, so that he spends upwards of 8000 merks by a year on his family, though it is nottouly known, that the same is kepted so privately, that she does not bestow the half of it; and as a farther evidence of the contrivance and knavery amongst them to cheat and abuse the said John Lauder, Doctor Trotter (who was employed to procure the foresaid pretended patent,) did make him beleive that he could not get it cheaper than £100 sterling, whereas he had agreed with Mr. Thomson in the Cannogate for 1000 merks, and falsely and theftuously kepted the other 800 merks of it to himself, and yet affirmed he had given him the whole 1800 merks, with oaths, till he was confronted with the said William (Thomson, I suppose;¹) and they have so far imposed on the said John, that they have caused him deliver back to the said Doctor a bond for 600 merks, though the annual rents thereof was sufficient salary for his pretended attendance as a physician, which (transaction about the patent;²) had a complication of breach of trust and many other crimes therein'; and when Mr. Thomson refused to deliver up the patent till the 1000 merks were paid, (which was to be advanced out of the first and readiest of the rents owing by Edington to the said John Lauder,) they in a most base and discreditable manner to the reproaching that honour and integrity with which he has lived all his time, did unpignorate his silver-plate, whereon his name and arms were engraven, with the said Mr. Thomson, without the said John Lauder's knowledge or privity; and so little care had this unjust stepmother and bad wife of her husband's and his children's fame, that she did oft pawn the said silver work to Widow Cranston and others, to remain as ane pledge for money she borrowed to give the said George Ramsay her father, and Doctor Trotter her brother-in-law, not being ashamed, for her base ends, to bring her husband's fame and credit in question, whose ingenuity would

^{1 2} Notes by Sir T. D. Lauder.

have abhorred the thoughts of so sordid and snaking methods, though she would rather wodset his honour than want money for herself and her friends to carry on their unworthy designs ; and the Complainers solemnly protest that nothing could have prevailed with them to have discovered the usage they have met with had it not been notourly known already, and were it not to assert and vindicate their Father's honour ; and therefore the above-named persons ought and should be severely punished in their persons and goods, to the terror and example of others not to commit the like in time coming.

De Souvenir les bracelets faites de cheveux de A. R. de W., &c.—(This explained in the margin thus :)—That's to say, to remember the bracelets made of the hair of Andrew Ramsay of Winton.

And to all the former acts of injustice and oppression, the said Margaret Ramsay added a step farther imposing on her said Husband ; that when he was prevailed on to purchase the lands of Idington from her Father, and to take the rights to himself and her in liferent, and to George Lauder their eldest son, in fee, the same is most unjustly provided to his heir whatsom-ever, so that failing of him and the other sons of that marriage the said lands might fall and descend to their sisters ; and which case has now existed by the death of all the sons of that marriage ; and whereof no example can be given that ever a parent provided lands to fall to his daughters where he had sons of any other marriage. Many parents have preferred their daughters in their estates, and excluded their brother from the succession, but never any parent preferred his daughters to his own sons : but all this was the effect of her influence and imposing, and noways understood by her husband, otherways he would never have consented to so unjust and unreasonable a conveyance, especially his daughter being competently provided and married without it : Likeas when this contrivance was made, and the disposition of the lands of Idington so taken, the said John Lauder was truly on death-bed, and never went to kirk and market thereafter, and so any conception the said tailzie was drawn in nor his acceptance thereof, could never prejudge the said Sir John Lauder his heir, to whose enorme hurt, leession, and prejudice the same was, and therefore ought and should be reduced at his instance, as well as being impetrated by imposition, in manner foresaid, as also *ex capite lecti*.

HISTORICAL NOTICES
OF SCOTISH AFFAIRS.

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OF
SCOTISH AFFAIRS.

JUNE 1661.

AFTER two years surcease of justice, the Parliament called by King MS. A. Charles the Second (whom God preserve) did sit doun the 1st of Januar ^{fol. 50.} 1661, the E. of Middleton being his Maj. Commissioner therein; wheir, according to old custome, their ware *Domini ad Articulos, et Domini ad Interdicta et Judicia*, the first medling with civill and criminall matters, the other only with matters civill. But the long want of justice, throu the confuson of the tymes, occasioned a great number of pleas meirly civill before the Lords of the Bils: who, being a Parliament, did not ty themselves to law, but, upon complaints most unformall, they ordinarily reduced decreits given by the Lords of the Seffion in 1649, and by the English Judges; which occasioned much clamor against them, especially against my Lord Cochrane, who was President theirof, for his forwardnesse that way.¹

Before this Court their was commenced a number of criminall actions containing a civill conclusion, or rather civill actions on a criminall

¹ [Marg. Note.] Yea, they proceeded soe irregularly in Pittarrow and Craig's case, that they did not so much as examine the witnesses upon oath, but took their naked declarations. Zeno-crates at Athens was dispenced with. See this at large *alibi*. *Vide infra*, folio 292, Gairdner and Tennent. See August 1681, in the manuscript E. pag. 212, Pittarrow.

medium, which they ordinarily referred to parties oaths to infer the conclusion ; contrare to the custome in criminalls, when parties are not tyed to give their oath to infer any punishment. Among other quæstions, this fell in to be debated, If the probation of a criminall medium with a civil conclusion in a civil court might be repeited in a criminall court to infer punishment? Which they fand not relevant ; but that the party might object against the witnessses in the criminall court, and to have them examined in his presence, which is not permitted in a civil court. Before the Lords of the Bils their was a disposition reduced by the Laird of Craig against Pittarro, *super capite fraudis et circumventionis*, and they had made him drunk when he gave it ; the disposition beiring the receipt of 10,000 lb. as the price, wheiras he never receaved a denier : but the decision, and the manner of it, ware more in a parliamentary nor a juridicall way.

Before the Lords also, in the case of Montrose and Argyle, it came to be debat, Whither, if a forfaulter be reduced *ab initio*, and declared null, and the very authority it selfe by which he was forfaulted evacuated, if in that case the donator to the forfaulted persone ought to be countable to the persone restored, not only fra the date of his restitution, but fra the very day and dait of the forfaulter. Alledged for the donator, He was *bonæ fidei possessor, qui fructus perceptos facit suos*; my Lord Argyle having got the gift of Montrose's forfaulter fra a Parliament reput and holden for the tyme to be a lawfull Parliament, and by vertue theirof 20 years in possession; as in a decret of redution of an infestment, the defender is onlie liable fra the a&t of litiscontestation, if sentence follow theiron, tho the decret bear the infestment craved to be reduced, to have been from the beginning, to be now, and in all time coming, null and of nane availl, &c. Alledged for Montrosse, Their was a difference betuixt a restitution *ex gratia* and *ex justitia*, and wheir the authority by which the forfaulter was pronounced is *funditus* tane away. In that *ex gratia*, it's true, the donator *fructus facit suos*, but not in that *ex justitia*, which is Montrose's case. Farder alledged, It's of dangerous consequence to bring men upon the stage for giving active obedience to A&ts of Parliament, reput and holden to be lawfull for the tyme, and a long time after, tho rescinded.

Their ware many pleas of this nature before the Lords of Articles and Bils, against particular persones for fynes and forfaultors, and wrongs done, fra the 1638 to 1651, and 1660, and for particular murders, and slaughterers, and burnings, done 20 years before, wheirin parties ware very earnest, for fear the A&t of Indemnity should pas before the clofing of their proceffes: and the Commissioner was forced to put a demurre upon theſſe actions, til the King's mind should be knownen theiranent.

20 Febr. 1665. *Toune of Edinburgh contra S^r W. Thomson.*—The A. fol. 53.
Counſell of Edinburgh, without the concurſe of the crafts and their extraordinary deacons, having depoſed Sir W^m Thomſone their clerk for this fault, that the Excife of their toune being fermed to 3 or 4 brewars by way of tack and contraſt, wheirin the Counſell ſubſcryves their part of the tack, and remits to S^r W^m to ſie the fermorars ſubſcryve for payment of the duety; and he negle&tting to get their hands theierto by the ſpace of yeir and day, and at the expiring of the tack the fermorars craving eaſe of the duety, and being threatned with a charge of horning, the Toune finds the tack not ſubſcryved; and they having ordered Sir W^m to ſie it done, and committed it to him by ane a&t of their Counſell, they repreſenting to him his fault, he ſubmits his censure to the Counſell, who immeadiatly depoſes him without ather citation, libell, or any other ſolemnitie. He theiron raiſes redu&tion upon 4 reaſones, which are ſet doune at large in the Informations. The Lords at the advyſing of the caufe fell 1st on the relevancy of the caufe of his depoſition. After ſome debate anent the method to be obſerved, they fand the caufe of his depoſition relevant unleſs he could prove the tacks ware yet ſubſcryved. The reaſons moving the Lords ware 1^{mo}, That fo great a negle&t was a preſumption of dole on Sir W^m's syde, tho he offered to make up the damage ſustained by the Toune throw the fermorars their not ſubſcryving; and 2^{do}, They thought, that tho the way of procedure was ſomewhat illegall againſt a clerk provided *ad vitam* to his place, yet that *multa fieri non debent quæ facta valent*, eſpeciallie betwixt a Mr. and a ſervant. The Diſpute I have at large. *Actor*, Wedderburn, Sinclar, & Lockhart.—*Alter*, Wallace, Cunyghame, and M'Keinzie.

A. fol. 56. b. 10 Nov^r 1666. *Archbisshop of S^t Androis and his tacksmen.*—In this case found, that the A&t of P. declaring all valuations and decreits of plat null, deduced fince the 1637, did put the intromettors with the teynds in *mala fide* to pay to anie other albeit they payed by vertue of a sentence. *Actor*, Sinclar.—*Alter*, Beton.

A. fol. 57. 20 Decembris 1666. *Dundee contra Arbroth.*—The Baillies of Aberbrothock having borrowed some canons from their neihbours in Dundie, for defence of their toun against the English *in anno 1651*, for which they gave bond, ather to deliver the same unhurt, or else to pay 500 m̄. [merks] as their price; and the haill maritime tounes of Angus being subdued, thir canons ware tane away *vi majore*; wheiron the merchands of Dundie having charged the Arbroth men ather to deliver, or to pay the 500 m̄. They suspend on this reasfon, that by the bond it's clear to be *contractus commodati*, by the nature of which contra&t, *commodatarius non tenetur prestare casus fortuitos, nisi culpa precedat casum*; and the canons being tane away without any fault of theirs, they cannot be lyable to the soume charged for. Answer: heir, *pacto suscepserant in se casum fortuitum*, and so most be liable for the same, tho by the nature of *commodatum* they would not be liable; for heir, in case of failzie of re-deliverie, they oblish them to pay 500 m̄. as the price. The Lords fand the reason of suspenſion relevant to affoilzie them, unles the chargers would condescend on some negle&t on their part to deliver the canon, and fand them not liable to pay the price contained in the bond, which was rathir adje&ted *nomine pœnae*.—*Actor*, Balfour & M'Keinzie.—*Alter*, Lockhart & Dinmuire.

1^{mo} Nov^r 1668.—Theirafter this cause came to be debat *in p[ræsentia]* D[ominorum,] upon the clause contained in the bond, that they should deliver the guns without any hurt or scaith, which comprehends fortuitous cases *præter naturam commodati*; 2^{do}, Alledged, this was not *commodatum simplex et regulare*, but *æstimatum*, wheir *per L. 3^{am}*, *D. Commodati, omne damnum est preflandum*. The Lords fand that clause in the bond, without hurt or scaith, did not comprehend fortuitous cases; that it was not *commodatum æstimatum* properlie, but a liquidation of the value in caife of scaith; for in *commodato æstimate pretium est in traditione*.

Dec^r 1667. In the forsaide cause betwixt some honest men in Dundie A. fol. 59. and Arbroth the quæstion ran, whither the bond granted by Arbroth was *commodatum* or *mutuum*. The Lo. fand it was conceaved in the termes of a *commodatum*; and the said *vis major* being *casus fortuitus*, Arbroth was not bound *præstare istum casum nisi culpa præcesserit casum*. They alſo found they ware bound *ex natura commodati in exactissimam diligentiam* for preservation of the guns. And in ſuit of this quæſtion their did arife another, vizt if the diligence required behoved to be antecedent to the fortuitous caſe or ſubſequēnt,—the obligation to do diligence for recoverie theirof ſtill remaining after that accident. Thus Arbroth ware forced to condeſchend on ſome a&ts of diligence; and the Lords, before answer, ordained Dundie to condeſchend on particular a&ts of negle&t, and then to confider at the aduizing of the caſe, if the diligence done was relevant to affoilzie fra reſtitution.

Then on Nov^r 1668, when thir diligences came to be advyſed, the caſe was againe debat on the claufe of the bond and the nature of *commodatum cœſtimatum*; after which the Lords fand as is before ſet doun. *Vide ſup.* 20 Dec^r 1666, thir ſame parties.

4th Februarij 1668. On Mr. W^m. Somervell being condemned in a cri- A. fol. 59. minall court for uſury, and having raifed a Redu&tion of the verdi&t of the affife, before the Lords of Seſſion, on error and iniuity committed by them, it came to be debated, If the verdi&t of ane affife might be reduced on that ground before the Lords. Contended, the Justice Depute being a judge diſtin&t and independent fra the Civill judge, and the verdi&t of ane affife being a ſoverain ſentence of a Criminall court, it could not fall under the compas of the Lords of the Seſſion or their review; and it's a novelty, and of a dangerous conſequenece, to reduce the verdi&t of ane criminall affife. On the other hand alledged, that they craved only the verdi&t to be reduced as to the civill effects of it, and not as to the criminall. This was ane a&tion extraordinarie, and never heard of before; the ſame came not to a ſentence, but was agried.—*Actor*, Harper & Wallace.—*Alter*, Lockhart.

A. fol. 60. Junij 1668. About this tyme was given in a bill to the Lords of S. Counsell, complaining on my Lord Stormond for fraudulent abstracting of Gibsone the Laird of Durie's niece, to whom the custodie of hir persone in law belonged, and for being art and part theirof, by accession ather antecedent, concomitant, or subsequent, *viz'* ratihabition, approbation, knowledge, &c. This bill was given in by Durie, and after a long dispute, the wholle resulting in my Lo. Stormonth's oath, he denied all accession theirto ; tho it was stronglie souffred he was not frie.

A. fol. 75.
No. 25. 18 June 1670. *Proctor fiscall of the Iles contra Wallaces, executors of the late Bisshop their.*—Their was a competition betwixt the Commissar of Glasgow and the Commissar of the Iles, who had the right of confirmation of the Bisshop's testament. Alledged for Glasgow, that *Regula regulans of confirmations is domicilium defuncti et ubi habebat focum et larem.* But so it is, he had his residence, his wife, his bairnes, and his familie in Glasgow ; and tho he was Bisshop of the Iles, and died their, yet he had not so much as a pot or a pan their, and when he went their, it was onlie itinerarie, but nowayes *animo remanendi.* Alledged for the Commissar of the Iles, that he being Bisshop their, *presumptione seu fictione juris,* he most be presumed to have had his residence their ; at the least, by the law of God and the Ecclesiastical canons, he ought to have resided their ; *item,* he divided the yeir and stayed all the winter in Glasgow, but the wholle summer he was constantly in the Iles ; and wheir its said he had also his armor and plenishing, both spirituall and temporall, at Glasgow, Sir Geo. Lockhart offered him to prove he had both books and brande in the Iles ; *item,* he died their. As to the non-residence Glasgow answered, that the rest of the clergie had dispensed with that in respect of his valetudinarines. The Lords finds the Iles should be preferred, if, at the tyme of his death, he was their *animo remanendi,* which they offered to prove. *Actor,* Wallace. *Alter,* Lockhart.

A. fol. 78.
No. 54. 2^{do} Julij 1670. *Dumbar contra Mr. Murdoch M'keinzie, Bisshop of Murray.*—This was a declarator at this Dumbar's instance ag^t the Bis-

chop and his sone, comisar of Murray, to heir and sie it found and declared, that he hes the sole and undoubted right of the comisar clerkship of Murray in all tyme coming, and for bygaines craves repetition of the wholle benefits and obventions of the said office ever since his unjust and illegall deprivation by the Bisshop. It being demanded by the Bisshop by what right or title he laid clame to that office, it was answered, he had right from Mr. John Hay, who was establisched comisar of Murray, by the King himselfe, in his gift under the Great Seall in 1646, and ratified theirafter in Parl. who, by his said gift, had power to elect and choise such clerks as he pleased himselfe, which clerks so chosen by him, ware to bruik, *ad vitam*; and, conforme to this power, he nominat this pershuar clerk, who ever continued in the peaceable posseffion theirof till the A&t of Restitution of Bisshops in 1662, at which tyme the defender most unorderlie thrust him out and placed in his oun sone, who has ay posseffed fincefyne. Then the Bisshop alledged that his right was null, and so could not be declared, because he was placed *a non habente potestatem* to place him, in so far as, *estlo, argumenti causa*, the gift granted to Comisar Hay had borne a expresse power to place a clerk, the same was onlie *stilus curiae*, and could operat nothing in prejudice of the King, (who at that tyme, notwithstanding of the gift, might have disposed on the said clerkship to whom he pleased,) nor of the Bisshops, who, by the A&t of Restitution, ware stated in his place: and they called to mind a pratique in 1647 betwixt the Bisshop of Galloway, and—wheir the Bisshop having empowered his comisar to choise and admitt proctors, it was found by this power he could not enter a proctor fiscall. But, 2^{do}, The dispositive clause in all writs, (whither they be charters, gifts, or other writs,) being that which regulates the wholle tenor and strain of the writ, wheir anie thing is omitted out of the same its no wayes understood to be transmitted at all,¹—but so it is heir; theirs no mention in the said clause of the gift of the comisar-clerkship or of any power of establisching a clerk. To thir 2 it was answered, that it was sufficient the power was in any part of the gift. They ware to have the Lords answere on this. Then alledged,

¹ *Vide Cragium, pag. 150, circa medium.*

3^{to}, absolvitor fra this pershuit, because its offered to be proven that the pershuar hes homologat the right of the said office inherent in the defender's persone, and hes past from anie pretended right of his ounē, in so far as he, by a subscryved minut betuixt him and the Bisshop, hes acknowledged the Bisshop to have a good right, and hes renonced his ounē clame and condescends to deliver up the registers and other writs concerning the office,¹ providing the Bisshop pay him, by the space of 3 years, 300 m. yearlie, which the Bisshop is content to do. To which it was answered, that for the Bisshop to found on that minut is *propriam turpitudinem detegere*, because its offered to be proven that when the A& of Restitution of Bisshops was making, the defender sent frequentlie for the pershuer and showed him whow the King and Parl. was about the restoring of Bisshops *in integrum* to all their former priviledges and concessions, and the cassing and annulling of all provissons to offices procured in the tyme of the troubles ; *item*, presentlie on the making of the A& he caused double the same, (onlie he keiped out the salvo that was made in favors of comifars, their clerks and others, who ware in posseffion of their offices,) and, so mutilat, did show it to the pershuar, and told him that was the A& made ; which false and disingenuous representation was the impulsive cause and inducement that moved the pershuar to enter in that contract with the Bisshop, and he never discovered his error till the A& was published beiring *in gremio* a reserve *ut supra*. It was replied, this was *ignorantia juris*, which excuses none, and can never liberat him of the minute ; he, being then major *sciens et prudens*, and a man that know the lawes of the kingdome, at the leift should have knownen the same. The Lords fand the reasoun relevant to be proven ather by the Bisshop's oath or the witnesSES present at their communing.

A. fol. 79, 2^{do} Julij, 1670. *Sir Alex^r Cunyghame of Camiskeith contra the Toune of Hadintoun.*—This was a charge for deliverie to him of a cup, or of 15 lb. f. as the price theirof, which the said toune was decerned by the comifars to make payment of to him, as he who had win the

¹ *Vide* D. 17 Febr. 1624, Thomsone.

same at their horse race. The reason of suspension was, that this being about a horse race, it was no way a consistoriall matter, and so the comisars ware not judges competent to the same ; but *estio* they had bein judges, they committed manifest iniquitie, in so far as they repelled a unanswerable defence in law, viz^t that Camskeich could never be heard to feik the cup, because they offered them to prove, that being wieghted at the louping on and at the leaping of, he was lighter when he leipt of then when he began, and so can never plead the cup ; and this, tho the same was proven by the judges sworn and appointed for wying them. Answered.—This is *jus 3%*, to the toune, and nowayes competent to them, but only to the 2^d rider, who compeirs not. *Item*, denies their ware anie such persones sworne to wy them, as also offirs to prove the custome in that place is that they do not wy them at their leaping of, which speciall custome most derogat to the generall custome of wyng them elsewheir ; *quia specialia derogant generalibus*. This custome was found relevant. *Actor. Charger*, Cunyghame ; *Alter*, Sinclair.

16 Julij 1670. *Vicount of Stormond contra E. of Northeſk.*—The E. A. fol. 82,
No. 78.
of Northeſk, then E. of Ethie, having employed the Vicount of Stormond by his missive letter, to procure to him the change of his title of honor, declaring that what he should expend in doing theirof, he should thankfully repay the same. The Vicount having procured the same by the mediation of Mr. Andro Hay, and having given above 100 ℥. sterling theirfor, perhues the E. upon his missive, for reimbursing him that and his other expences. Their defence was upon compensation. *Actor*, Mr. W^m Murray.—*Alter*,

29 Julij 1670. I hear their is ane improbation raised at my Lord A. fol. 85,
No. 101.
Rutherford's instance, against on John Rutherford, a servand of his umquhile brothers, and on who intromettet with his estate divers years, of some bonds granted to the said Jo. by the deceift Lo. Rutherford, amonting neir to 2000 ℥. sterling, with a generall discharge of my Lo.'s of all he could charge him with, and ane assiguation to fundrie debts due to my Lord. The reasons against the assiguation are, 1^o, offers to prove

my Lo. was lying in the Abbey fick that day wheiron the said affignation is forged to have bein subscrived, and yet it bears subscryved at London ; so this reason is on *alibi*, and for adminicling the same, they adduce Ja. Borthwick's count-book, beiring that a potion of phyfick was administrat to my Lord that day, he lying in the Abbey. 2^{do}, theirs on Broun, (designed in the affignation, indweller in Lauder,) who is writer theirof, and alfo subscrives as a witnesse, their was never such a man, nather dead nor living ; or if they can adduce any such man, then they offer to prove that's not his hand writ. *Vide infra*, thir persones hanged, folio 309.

A. fol. 105,
No. 224.

27 July 1671. In the forsaid Improbation mentioned at number 101, betwixt my Lo. Rutherford and Captain Rutherford, the Advocats in ther reasoning entring upon the matter, the Lords ordered Ro^t Hamilton, maiffer, to goe and bring the defender out of the tolbooth, wheir he had lyen of a long tyme before, to their prefence, in caife their should any thing occurre wheiron he might be interrogat by them ; whille he is coming over, he pretends their ware some papers in Colliton's chamber in Besse wind, which would be of great use to him if he took them with him ; and, theirfor, begged leive to fetch them, and paroled he should presentlie returne. The maiffer trusting him simplie, Rutherford makes his escape ; the rumor wheirof running up and doune the toune, Towie Barclay, who was lately but released from his confinement at Glasgow, comes in to the Lords in the Inner house and proffered to find him out and fetch him againe within ane hower : which accordingly he did, with a great deal of zeall, expressing that he could not abyde cheatrie by anie thing in the world ; such persones know ane another's lurking-places fo weill. [No. 101, fol. 85, No. 664, fol. 309.]

A. fol. 85,
No. 102.

3 November 1670. *Toune of Irwing contra Robertland*.—Camskeich being addebtid in a certaine soume of money to Campbell, writer in Edinburgh, he employed a messenger, with 15 or 16 Highlandmen he got at Dumbartan, to go to Sir Alexander's house at Robertland, with letters of poinding, to poind such goods and geir as they found on the ground of the lands, or in his dwelling-house. Sir Alexander was from home ;—they poind some horses, &c., and brings them nixt morning to the mercat

cross of Iruing (as use is) to be apprysed their. Sir Alexander gets notice of it; he runs to the Earle of Eglington, as bailzie of the jurisdiction, complaines whow he was affronted, that some had come and plundered his house under the pretext of poinding; procures from him some 20 men to go and recover them. With thir men he enters Iruing, and with violence offers to hinder their poinding. The Provest being present, entreated them to behave civilly, and remember they ware in a brugh-royall. Robertland's man, after much insolent boasting, drew his sword, and ran at the Provest, and would undoubtedly have slain him, had he not bein immediatly knockt doune by some of the toune-officers, and killed. Now, Iruing is pershuing before the Secret Counsell, a ryot and convolution of our Soveraine Lord's leidges, and a impeding the execution of his Majesties laws in contrare the A&ts of Parliament; and he against them, for the slaughter.—The Toune was affoilzied.

The Advocats at last having boated on the 10 of January 1671, they A. fol. 85 b.
having made a secession for some weeks because of the Regulations, we No. 102.
returne to our former Observes,

2 Februarij 1671. *Earle of Argile against Geo. Cambell.*—The Earle A. fol. 88 b.
pershues the Shiref, as having bein chamberlane to his Father the No. 122.
space of divers years, to compt for his intromission with the rent of his lands. Against which it was alledged, that he could not compt for his intromission thesse years, in respect he had a generall discharge of the then Marquis, posterior to all the intromissions libelled, *viz' in anno 1649*, wheirin this very pershuar is a witnes. To which it was replied, that the Shiref was in *mala fide* to take a discharge of the then Marquis, this pershuar's father; because, before the same, he was involved in sundry hainous, enorme, and atrocious acts of treason, for which he was their-after forfault *in anno 1661*, and so was incapable by the law to grant any discharge.¹ Duplied, the saids a&ts of treason committed by him, for

¹ *L. 19, D. de R. Juris, Unusquisque debet scire conditionem ejus, &c.* See 6 Decembbris 1609, Cunyghame and Home. See Balfour's Collection of Practiques, Tit. 19 of payment, *in principio*: It's folio 32.

which theirafter he was forfault, being most latent and secret, nather could I (nor indeid was I obleidged) to know them, unles they had bein nottor to the wholle country as they ware not: and thus was it decyded in Regent Morton's case,¹ who, 16 years after the fact, being accused for the treasonable concealing of King Hendrie's murder, no dispositions nor other deids whatsomever made by him, all that tyme before his accusation, ware quarrelled; and of all necessity and reason it most be so, wheir the crimes are latent and not obvious to every man's capacitiē, as was in Morton's case, and so also heir; else what a horrible uncertainty would men be put to, to know the most privie and close intrigues of thosse with whom they contract or have otherwayes to do, leist they be lying in the guilt of treason. 2^{do}. He can never pretend that his Father could not then grant a valid discharge as being *astrictus criminis laesae majestatis*; because by the decretit of forfaultor given against him, it appears that the main acts and crimes for which he was forfault ware all committed by him after his granting the said discharge, *viz*^t in 1654, in which he complied mightily with the Usurper; for tho in his criminall libell their was many other things accumulat against him, which ware perpetrat before the date of the said discharge, yet his complyance in 1654 was the thing the Advocat then infisted only on; and he declaired he restrikted his summonds theirto. 3^{to}. Craig, page 86 *in initio*, tells, that payment may be lawfully made to ane guilty of treason at any tyme before sentence, which he may also discharge; but *ita est*, this discharge proceided upon payment made to this purshuar's Father of the rents of the lands intrometted with by him; Ergo: (*vide infra, numero 406.*) The E[arle] also alledged, that, notwithstanding of this discharge, the defender must count to him for some particulars of his intromission that he should pitch upon, because he offered him to prove by the defender's oath, that he had not counted for the same. To this it was answered, that the discharge behoved to liberat him from giving his oath anent any intromission with the granter's rents before the date of the same; and that

¹ *Reo majestatis non recte solvit debitor, L. 6 C. ad L. T. Majestatis, 4^{to} l. & sequ.: D. de solutionibus.* See Hope Tit. of Treason, folio mihi, 246. Sie Craig, page 86, num. 446 & 479. Conranus, libro 5 Commentariorum, capite ultimo.

it ware a very dangerous thing if men ware put to their oath wheir they sufficiently instruet by writ, especially confidering that it's now 20 years and more since he counted and gave up all his instructions to this pershuar's Father, upon which exact account followed this discharge, and that *tanti temporis intervallum* produces in law probable oblivion ; yea, the halfe of it suffices ; *Mascardus de Probationibus, Conclus.* 1128. Replied : the defender had no prejudice to give his oath, tho it was *in facto antiquo*, because if he should depone *non memini* whither I counted for such or such particulars, but for ought I know I did ; this will affoilzie the defender, in regard his deposition proves not the pershuar's replie. The Lords ordained the defender to depone. This was my Lord President's doing, he being ay Lord Argyle's great confident. It was admired by all, that he blushed not to make a reply upon his Father's forfaultor, and whow he had committed many treasonable crimes before the discharge ; and to fie him, rather than tyne his cause, suffer his Father to be reproached and demeaned as a traitor, of new againe, by his ounе advocates.

3 Februarij 1671. *Lord Dumferling contra the vassells of that Lordship.*—He having given in a bill to the Exchequer, desiring they might not enter any of the vassalls of that Lordship, but that they might all pas by him, as having a three 19 years' tack of the wholle casuallties, obventions, and few fermes theirof, at leift that they would enter none til they produced a certificat under his hand that he was satifid anent their composition. It was alledged for the wassalls, that the Earle's right was null, because of the law, long tacks, such as this was, are æquivalent to ane alienation ; and all alienations of the King's annexed propertie and proper patrimonie of the Croun, are discharged by many A&s of Parl. ; but, *ita est*, the Lordship and Abbacy of Dumferling is of the property annexed to the Croun, tho not by the generall a&t in 1587, yet by a posterior a&t in 1593, its specially annexed, and it most be also supposed to be comprehended in the a&t of Annexation 1633. 2^{do}, the tack being granted in 1641, and his Maj. confidering that many things had escaped both his ounе and his royll Father's hands during the tyme of thesse confusions, he hes, in 1661, revoked all

A. f. 89,
N. 124.
See a 4to.
Manuscript,
pagina 20.

deids done by him then, and tho by ane particular a&t in 1661, this tack be excepted fra his Maj. revocation, yet it most fall under the same ; because, 1^o, The a&t *salvo*, according to its explication in 1633, reserves all parties intresses as they ware before the making of thesse ratifications. 2^{do}, The explanation of the tack wheiron my Lord Dumferling layes greatest stresse, is not ratified at all, and so it is undoubtedly revocked. It was answered to the 1, That if the Lordship of Dumferling ware indeid of the annexed property, the fewars and vassells would be so strongly founded on law, reasoun, and a&ts of parliament, that it would not be easie to returne them ane solid answer ; but that their case was nothing such, for that Lordship belonged not to the King, *jure publico seu coronæ*, but *jure privato proprio et jure successionis*, as air served and retoured to his mother, Quean Anne, in 1629, to whom it was disponed by King James at Upslo, (upon Abbot Pitcairne's resignation in his hands,) *per morganaticam*, and in a morning gift, which irredeemable disposition is confirmed in the same Parliament, wheirin throw mistake, its forsooth annexed to the Croun, *viz*. in 1593, and she was theirupon infect by chartor and seafine which are yet extant to show ; now it falling to the King as air, and being privat patrimonie, what power a baron or gentleman hes, the King most have the same in disposing of it, setting it in tackes or otherwayes at his pleasure ; *Ita, Craigius, pag. 110*, and its expressly so ratified by the Parl. 1612, a&t 10. Replied,—That the infection given to Quean Anne was undoubtedly a null infection, and if it had bein quarrelled, it could never have bein sustained ; and it having bein produced and proponed on in the proces pershued at the instance of my Lord Secretary, as Lord of the Regality of Muslebrugh, (which of old was a part of the Abbacy of Dumferling,) against the fewars of Couland, it was not found a valid right wheirupon to defend ; and whatever was in that, the said Lordship recurring to King Charles as air to his mother, it became againe of its oun nature, and returned to be of the patrimony of the Croun, and so is to be understood in the annexation of the superiorities of Kirklands made in 1633.—This went to interlocutor, and they found the Lordship of Dumferling was truely of the annexed property ; but they waved it, and

would not give furth their answer to his bill; wheirupon I hear he has made new addresses to his Majesty.

13 Februarij 1671. *Lord Halton contra Scrimgeor.*—This was a de- A. fol. 89, 90,
clarator of his gift of *ultimus hæres* to the deceift Earle of Dundie. No. 130.
Against which it was alledged for Kirkton, that their could be no declarator, because by the very chartor produced by them in proces, there was a clause of substition conceaved in favours of the defender's good-fire, wheirby failzeing of aires maill of Dudhop, the lands ware tailzied to Kirkton and his aires. *Item*, offered to prove by writs in the chartor chest, (which had bein given up to Halton upon a naked bill,) that he was within the 9^t degrie of consanguinity to the last Earle, and that all by the male line; for proving wheirof, he craved inspe&tion of the said chartor chest. This was denied him, and he was appointed to pershue ane exhibition theirof against Halton, as accords, for making his specifick fibnes appear. And for the tailzie, it was brocken fince, upon which the gift was declared, reserving *ut supra*. This was thought hard.

13 Februarij 1671. *Earle of Argyle contra the Laird of M'Naughton.* A. fol. 90,
—This is a declarator of property of the forest or mountaine of Ben- No. 131.
bowie. Against which alledged for M'Naughtan, that the same was pro-
perly his, lying within the bosome of his lands, environed theirby at
3 corners, and lying open only at one; it was also contained in some of
his seafins, he had been in possession of it thesse 100 of years, by all deids
and acts of possession and property, and by debarring the pershuar from
the same. Answered, that any acts of possession he had, ware only
as subforrester to him, and so can never be relevant to infer property,
wheiras the Earle possest by all acts of dominion that can be condescended
on; and it ware a strange thing in the Hielands to stear any doubt who
was heritor of that forest, since it was never controverted their but its
the Earles, and he has slain a 150 deer in it at a tyme, and has inter-
rupted any possession the defender had. *Item*, their is quinquenniall
possession retoured, anterior to the forfaultor, which is eneugh to the King

and his donator, by act of parliament. They being both alike pregnant in their alledgeances, their is a mutuall probation appointed them, *hinc inde*, for leading witneses upon their possession. They will both get witneses eneugh to prove what they please. *Vide infra*, number 348.

A. fol. 136,
No. 348. 25 Junij 1672. The Lords having confidered the probation used in the action, marked *supra* at number 131, betuixt the E. of Argyle and the Laird of M'Naughton, they find the forest contended for to be a pairt of my Lord Argyle's property, and theirfor decernes M'Naughtan to remove their from. Every on forfaw this would be the fate of that action, considering the pershuars probable intres in the President.

A. fol. 91.
No. 144. 22 Februarij 1671. *Earle of Erroll contra the E. of Finlator and others.*—The Barronie of Arroll being sold in this Earle's minority, to my Lo. Kinnoule for 589,000 mks.; in the contract, Kinnoule, and sundry others with him, ware oblisht with that vaft price to satifly the particular debts given them up, which burdeined the estate of Erroll, and to report valid discharges theirof. This pershuit is now for seing if the money was employed for the use to which it was destinat, and for reporting thesse discharges.

A. fol. 91,
No. 147. 23 Februarij 1671. *The Tutors and Mother of Govane.*—This Govane's goodfire and father having bein merchands in Glasgow, and hir father dieing and leiving hir, his only child, behind him in hir non-age, heritrix of a confiderable fortoun, what in land, what in money, the goodfire, (of whosse acquiring the wholle means was,) being on life, became administrator of the law to his grandchild, and in his teftament did nominat several persones in whom he much relied as hir tutors, being persones also fib to the pupill, who, *ex super abundanti*, took a dative and fand caution. The laffe being now out of hir infancy, viz^t paft 7 years of age, the tutors, by an action against the mother, (who yet continues a widow,) craves the persone of the pupill may be exhibite to them, to the effe& they may have the custody of hir conforme to the conftant law and pra&tice of this kingdome, which prefumes tutors will be more carefull of the education of pupils, and not fo indulgent, by which many are sadly

corrupted, as the mother will be. The Lords, because they discovered ane inclination in my Lord Presidint towards the tutors, they theirfor, in a bang, combined in behalf of the mother, only because it was represented to them that the Presidint was a freind to the tutors, and carried it over his belly, that the child should continue with the mother. *Vide* 14 Julij 1627, Noble; 4 Julij 1629, L. Langshaw *cont.* Muire, and the cases their.

It is uncontrovorted but the Members of the Colledge of Justice *in civilibus*<sup>A. fol. 94,
No. 161.</sup> have *præscriptionem et privilegium fori*, none others, by A&ts of Parl. being judges competent of their civil actions but the Lords of Seffion only; but whither it be so *in criminalibus*, as ryots or the like,¹ may be much doubted. Upon the on hand, it seimes that the Magistrats of Edenbrugh, (tho justices of peace within themselves,) nor no inferior judges to the Lords of Seffion, S[ecret] Counsell, or Justice, can medle with them, because, by A&t 23 Parl. 1661, ratifieng the wholle Colledge of Justice priviledges, its declared, that all liberties and immunitiess belonging to the Lords of Seffion are extended to belong and appertain by [to] the Advocats and all other Members of the Colledge of Justice,² but *ita est* by expaffe A&t of the same Parl., *viz.* A&t 38, containing instructions to the justices, the saids justices of peace have no power to medle with the Lords of Seffion, *ergo*, naither with the other members of Seffion;³ yet by that fame 38 A&t it would seime, in the matter of riots and such like, the members of Seffion may be punished and proceided against by the justices of peace, and consequently by the Magistrats of Edenbrugh, because they are empowered to proceid against all offenders whatsoever under the degries of noblemen, prelats, counsellors, and Senators of the Colledge of Justice, unles we say the wholle members of Seffion, most be understood

¹ Paulus Voet, in his tract *de Statutis*, pag. 282, states this question, and thinks ane exemption to Advocats from answering to Inferior courts of this kind should not extend to Crimall actions.

² *Vide* my Observes on the occurrents in the Session in January 1677, in Tom Baird and B. Charteris' case, pag. 5, 6, &c. [f. 272, n. 531.]

³ *Vide infra*, folio 319, [No. 721, § 7.]

their under the Senators of the C. of J., as enjoying all the same priviledges with them. Our priviledges got a sore dash in 1670, by the 8 Act of that Parl. wheir the Lords of Seffion their priviledges are ratified, and nothing of the rest. Sie my animadverstions upon that Act.

A. fol. 94,
No. 158.

5 Martij 1671. *Earle of Monteith & the L. of Douchry.*—This was a mutuall ryot pershuied *hinc inde* before the Counsell. Douchry posseſſing ſome of my Lord Airth's lands as tennent, and refuſing to remove, my Lord gets decreit of removing againſt him, and theirupon he is eje&ted by the ſhiref; notwithstanding wheirof he intrudes himſelfe in poſfeſſion again; wheiron Airth takes out a caption againſt him, and ſends to take him. He takes out a prote&tion and waves it about his head, and bad the beſt of them offer to stir him when he had that. They deſired a fight of it; he refuſing, they thought themſelues not obliġed to take notice of it tho' it ware, ſeing it could defend him only from perſonall debts, but not from caption for not obeying a decreit of removing and eje&tion, and ſo offered to take him; he, his ſones, and ſervants, drew their ſwords, firſt hurt feveral of Airth's men, and muſtiat one [man] of 2 of his fingers. The Lords having examined both their witneſſes found Douchrie the [firſt] aggrefſor, and theirupon laid him in prifon.

A. fol. 94,
No. 159.

5 Martij 1671. *Two Merchaſts in Dundy, contra the Proveſt and Bailzieſ theirof.*—This was ane action for wrongous imprisonment againſt the Magistrats, who ware alledged, out of malice, to have called thir 2 perſones to cauſe them depone upon oath whow much wine they had ſold out to their cuſtomers; to the effe&t they might know what they had to exa&t of theſſe retailers for making up their proportion of cuſtome and excife, which, by A&t of Parl. the brugh payes to the Kingis Majefly. This the merchaſts refuſed to do as a thing extraordinar, not practized in Edinbrugh, nor any place in Scotland, and done only of purpose to make all ventoners go by them, and ſo break their trade. Upon their reſuſal they ware comitted to prifon, wheirof they now complain to the Counſall.

9 Martij 1671.—*My Lord Advocat & Erskin of Dun, his informer, ag^t A. fol. 94,
Charles Robertstone & his 2 sones, indweller in the Braes of Mar.*—This
was a ryot pershued against the 2 boyes as the principall actors, and against
the Father as hounder out, commander, at leift ratihabiter, for throwing
doune, *vi armata*, openly in day light, with intention to oppresse the
subjects, a sheild belonging to Dun, wheirin he made his butter, cheise,
and other milknes, before the Criminall judges. Alledged, by Sir G.
Mackenzie, for the 2 bairnes, that they could not pas to the knowledge of
ane affise, because, being *infra pubertatem*, within the years of 14 when
they committed the fact, they ware not *doli capaces*, and so not punishable
of the law. Answered ;—Tho they were not *puberes*, yet they ware *pu-
bertati proximi*, viz^t 12 or 13 years old at leift, and at which tyme the
law presumes them to be *doli capaces*. Whover, in regard of their
non-age, the Advocat declared, their conviction of this crime should not
infer danger ather of life or limb, but only *pænam extraordinariam*.
The Justices fand them of the age wheir they ware capable of dole and
mischeiff, and theirfor found they should pas to the knowledge of ane
inquest. This was a great interloquitor : fie the like debat on the 24 of
August 1612, Mauchan ag^t James Midleton, for slaughter of his sone, in
my Compend of the wholle criminall registers.

2^{da}, Alledged for the Father, that he cannot pas to the knowledge of
ane inquest, because, he being only pannelled as ane accessor, for giving
command and order to his sones to do the crime, till they who ware
conveined as the principall actors be tryed and discuft and found guilty,
he cannot pas to ane affise, conforme to the law of the kingdome, and
particularly the statutes of K. David the 2^d, cap. 29, and, if the principall
actors ware absent, a Judge could not proceid against the complices.
Answered Advocat ;—The same ware most unjust, and he supposed a man
had given a warrand in writ for killing another ; accordingly, the murder
was committed, and *notorie constat de corpore delicti*. The commander is
accused for giving the warrand,—he denies it not,—shall his punishment
be superceided and he goe frie, because, forsooth, the principall actor, and
his instrument, is fugitive, and cannot be got, *nullo modo*.—The Lords
found the Father should also pas to the knowledge of ane inquest, notwith-

ftanding he was only a complice, and the main actors ware not yet convict.¹

Then it was controverted whow the Father's order could be proven, for *scripto* it could not be, seing none would be so mad as to give under their hands a order for committing a crime;² and against the proving it by witnesSES, it was alledged it was of the nature of *mandatum*, but *mandata in civilibus* cannot be proven by witnesSES; *ergo multo magis* most it be so in *criminalibus*. Yet the Lords fand their was no other way to prove commands of crymes but by witnes, and theirfor sustained it so probable. Then alledged, if it should be proven that the Father commanded them, the boyes behoved to pas frie, because they did it in obedience to their father's command, and *in jure velle non creditur qui obtemperat imperio patris*; and cited also ane a&t of adjurnall in the year 1662, wheir on John Rae being pannelled for thift, this defence was proponed by Mr. Thomas Baird,—that he was *impubes*, and so not *doli capax*, and he did it in obedience to his father's command; Sir G. Mackeinzie's selfe, fitting then Justice Depute, admitted the defence and affoilzied the boy. My Lo. Newbayth chanced to say, it was *peffime judicatum*; Sir Geo. answered, it was most just, and that he had determined as legally while he sat Justice as he or any that would come after him. This occasioned a great heat between them, and gave rise to severall reparties. Yet I discovered my Lo. Advocat, S. G. Lockhart, and others, of the mind that that sentence 1662 was rash and inconsiderat; whoverer, I have heard it had some weight, in 1662, to affoilzie George Campbell, Shiref of Argile, of sundry slaughters committed by him, that he did them at command of the Marquis of Argile, *cui bene refistere non poterat*.

Then 2 witnesSES ware brought in for proving the fact. Objected against them;—They could not be received, because they ware *consci*j* criminis*, present at the committing of the cryme, of the number of thosse

¹ *Vide* 13 Januar, 1679, Todridge, pag. 48. *R. Ma. lib. 4, ca. 26.* *Vide* this sustained in the triall of Classicus' complices, as its related by Plinius 2^{da}, lib. 3^o, Epist. 9^{ra}.

² By oath of party it could not be proven, because it imported life or limb. *Item, nemo tenetur, jurare in propriam turpidinem.* *Vide infra*, num. 295 and 445, in Dunfermeling and Calandar's case, *prope finem*.

convocat, and as guilty, if not more, of the crime than the pannells; and who have got assurance of impunity from the pershuar, (with whom they collude,) that they shall never be troubled for their offence, providing they come in, and, by their depositions, fylle the pannells.¹ Answers Advocat;—*Regulariter consciij criminis non admittuntur.*² Yet that rule is only to be understood *in criminibus capitalibus infamiam irrogantibus, in talibus non admittuntur consciij criminis, quia gravius versatur præjudicium,* unles it be *in criminibus exceptis,* such as læse-majesty, &c., but in such petty inconsiderable crimes as this, wheir a pecuniary mul& comes only to be imposed, *socij criminis* may very weill be admitted to depone against them, tho in no case can they be used for them. Replies pannell;—That he oppones the inviolable practise repelling *correos delicti;* item, intreats the King's Advocat to remember whow stoutly he plead in the case of Captain Barclay, that *consciij criminis* could not be admitted to bear witnes, and ware for that reason repelled; item, the Law of the Majesty expresly repells *conscios criminis* fra testimony without any such distinction as my Lord Advocat makes, *Stat. 2^{da} Ro^{ti} Primi cap. 34,* and his distinction seimes rather to be in the contrare; for *in criminibus gravioribus et capitalibus maxime interest reipublicæ ea detegi ne maneat impunita;* and theirfor all manner of probation ought to be admitted, but *in levioribus* not so; item, better that no crime in the world ever should be proven than that it should be made out by false mensworn raskals such as the *consciij criminis* for the most part are: *satius est impunitum relinquere nocentem, &c.* Hope likewayes in his collections, Tit. of Treason, tells of a statute of session in 1591, by which infamous persons, *socij criminis*, and others, are admitted to bear witnes in the case of læse-majesty, and that this statute was made upon a quære from the then justices. Duplies Advocat, That Barclayes case meits not because that was *in crimine capitali*, but such is not this; item, the Law of the Majesty most be understood with that distinction; and for the citation out

¹ *Vide Hippolitum de Marsiliis sing. 209, Grammaticus decis. 25 & 28 & 56.*

² See this case at large, both in Sir G. Mackenzie's pleadings, *pagina 207,* & in his *Criminals,* *pagina 344.*

of Hope, the same is not authentick, it being only Hope the younger, nather does he ever remember of such ane act of federunt; nixt, it ware impossible to prove ryots of this nature, if they admit not persones present at the fact to be witnessses; and this is ordinarily done in spulzies pershued civilly, and deforcements pershued criminally, especially before the Secret Counsell, wheir they proceid *per viam inquisitionis*. Triplied, The laws being absolute, we ought not to admit of any distin&ion, *ubi lex non distinguit nec nos, &c.* The Lords found the witnessses not receaveable, in regard they ware *socij criminis*. The Advocat was hudgely displeased with this interloquitor, and said, the King and Country lost not so great a interlocutor thesse 20 years: and truly S. George Lockhart, and others, thought it unjust in its generality, and thought the Judges should have insert in their interlocutor the particularities of this case, that moved them to determine so. *Vide l. finalem c. de accusationibus clarum parag. ult. Qu. 21, de Socio criminis et de mandatore; item, Qu. 60, tam de ætate minuente delictum quam de mandato superioris.*

The assise being enclosed, they ware affoilzied for want of probatione.¹ If Dun had pershued it before the Counsell, he would have got the father's oath upon his order, or ratihabition of his sone's ryot, which he could not get in the Criminall court, and that would have made shorter proces. Their be 5 great interlocutors in this one feckles cause, and which will prove leading caises in all processses heirafter. *Vide etiam Matthæum cap. secundo prolegomenon. Qui crima possunt admittere, ubi de impuberibus; item, de Probationibus, cap. 2^{do} de Testibus pag. 731, de sociis criminis, et passim alibi.*

A. fol. 100,
No. 179.

22 June 1671.—The inhabitants of the toune of Rutherglen pershues James Riddell, present provest of their brugh, before the Secret Counsell, to the effect he may be punished and censured by them for maleversation in his office. The articles libelled ware, that he wronguously, and at his oun hand, emprisoned severall of the burgeses of the toune,

¹ *Viz* the apparent collusion, and that their was no penury of witnessses, it no being *crimen occultum*.

and fined them ere he would set them at liberty ; that he took bribes to do what he was obliged to do by his office ; that he gave decreits condemnator, wheir by the deposition of the witnesses he should have affoilzied, and affoilzied wheir by the depositions he should condemne ; that he profaned the Saboth day by drinking openly the tyme of divine service, and scoffing such as came from sermon, and saying, he got more good of the aill he had been drinking, then ever he got of preaching : item, for dighting and riddling his malt on the said day, and for contemning the King's birth-day, and not causig it to be observed, with many other deids of oppreffion and profanenes. He did not deny the said deeds, but studied to diminish them by some qualties, as that he emprisoned none but such against whom their ware decreits, and acts of warding, issued out, &c. The Lords fand the complaint relevant, and admitted the points of it to their probation. Their ware very great presumptions for making it appear that he had overacted ; yet it was thought a ticlish proces if seditious and mutinous burgesses ware heard thus way to stange their magistrats the very tyme of their office, which tends to the contempt of authority, and might be made a precedent for far greater maters, and that the Convention of Borrows would have bein more proper judges of it then the Counsell.¹

29 Junij 1671.—In the cause of the Provest of Ruthglen, at num. 179, A. fol. 100, the Lords of Secret Counsell considering the probation, deprived him ^{No. 184.} from his office.

29 Junij 1671.—Young Drum Somervell and his spouse, George Gra-^{A. fol. 100,} hame's daughter, ware pershued by Captaine Rind before the [Secret] Coun-^{No. 185.} sell for clandestine and disorderly marieng, contrare to the 34 A& of Parl. in 1661. The Lords, conforme to the tenor of the said A&, fined him in 500 £, and commanded him to prison, their to stay for 3 moneths.²

¹ By the Roman law, no magistrat could be pershued during the tyme of his office, *sed post administrationem depositam non debet excedere urbe per 50 dies. Quoniam Attachamenti cap. ult. ibique Titulus in cod.*

² The 22 act in 1649 is yet severer.

A. fol. 103.
No. 206. 7 Julij 1671.—Their is a declarator raised at the instance of the E. of Sutherland, against the Earles of Erroll and Marshell, for declaring that the Precedency, both in Parliament, Counsell, and other places, belongs to him; togither with an improbation of all such writs as any way may instruet their antiquity beyond his, &c. *Vide infra* numb. 271.

A. fol. 115.
No. 271. 24 Nov^{rs} 1671.—The haill termes of the improbation (mentioned *supra* at number 206,) at Sutherland's instance against Erroll and Mershell for the precedence being run, certification was this day granted against all patents of honor or other writs whatsomever, granted to the said Earles, which can any wayes instruct their precedencie, because they ware not produced; but for any other writs that could admynicle the same, or collaterally speiks of the saids Earles, belonging to other persons, refuses certification against thesse; but thought the said Earles, *qua* Constable *et qua* Marshell, to have the place at leift, will not dip theiron, because Sutherland's summons is not against them, *qua tales*, but only as Earles; so that this contest was only for the Ladies their place, for the Constabulary and Marischalat being personall dignities, their Ladies take no place theirby, but the Countes of Sutherland, if he be ane older Earle, will take the place of them. It was judged a new pratique to admit certification against patents, which are in publick *custodia*, and that the surest and most noble of all others, *viz'* the Records of Parliament. *Vide infra* numb. 298.

A. fol. 124,
No. 298. 16 Januarij 1672.—My Lord Erroll's proctors having stopt the certification (granted *supra* at num. 271,) against all patents of honour or other writs granted immediatly and directly to himselfe and his predeceffors, Earles of Erroll, in so far as they could instruct precedence before Sutherland, and they being of new heard upon that point, it was alledged, for Erroll, that no certification could be admitted, because patents of honor ware not the subject matter of improbations nor certifications, unles the pershuar laid claime to the defender's title of honour wheirby he and his predeceffors are created or designed Earles of Erroll, which is not the case; and, in ane improbation, the defender's and pershuar's rights and intrefts most be in *eodem subiecto*, which is not heir, the pershuar's title of honour and the defender's being things quite different, and which may both subsist

as *res mere disparate*; and in ane improbation the pershuar and defender most both be pretenders to dominion in the thing concerning which improbation is moved, as, for instance, in improbation of rights of lands, the pershuar most libell he stands infest in thesse lands, and the defender's rights called for most be rights of infestment, or such rights as may affect the lands wheirin the pershuar libells he stands infest, else his title will not be sustained, nor any certification granted, and the only proper way to pershue precedency is by a declarator. Replied,—Tho the pershuar and defender's title ware different things, yet he had good intres to pershue this improbation, because precedency, which consequentially arose from their patents, was the subject matter of the debate. Sie the answers to this and the other replies in the Information. The Lords (*totis viribus obnitente Praefide,*) found such writs as patents and the like ware not the subiect matter of a certification, because the pershuar's and defender's rights ware not *circa idem*; and my Lord Advocat reasoned against the pershuar's consequentiall intres, that, if it ware eneugh to sustain the admitting a certification, then, by the same rule, a man only served air to his father might crave improbation or certification against writs granted by his goodfife or others, tho he is not served air to them, their being a good consequentiall intresse. 2^{do}, A man infest in a milne might, upon that ground, crave certification against the evidents of another milne neir him, by which he finds himselfe hudgely greived and prejudged in the thirle or fucken of his milne. 3^{do}, One man having a fair might by this account improve the writs of another heritor's fair, wheirby he finds his customes diminished;—and yet all thir are absurd.

8 Julij 1671.—The Comifars of Edr and the Shireff and his deputes
falling in contest about that seat in the north fide of the Hall, each of them
lying clame theirto as their oun, and the matter being brought before
the Lords by a bill given in by the Comifars, the Lords found that be-
fore the building of the Parliament House they had different seats, and that
they so continued till both the offices came to be in the perfone of one,
viz: of Claud Hamilton, in the beginning of the Englishes, who having
done with the one Court, sat still and keiped the other; and that since

fyne the Shiref-Deputes have used that seat throw tolerance fra the Comisars, and theirfor finds they may ather take their oun way for getting a new seat, or, if they please, they may fit doun and hold their court at 12 a cloak, when the Comisars are up. If their had been ane active Shireff, (he being both far more honorable and far more ancient than the Commiffariot,) it may be thought he would not have loft the Interloquitor.

A. fol. 105,
No. 225. About this tyme [27 Julij 1671,] was Mr. Archbald Beith, the minister of Arrane, pannelled for shutting [shooting] a man in a boat that was come from Ireland. The defence proponed for him was, that by A&t of Secret Counsell, all the lieges of what quality soever, (out of which generality he, because of his office, could not be excepted,) are not only empowered but commanded, to feaze upon all veschells importing wi&tuall or other prohibited goods from Ireland ; and in caife of resistance to sink the same, which, out of all doubt, gives also a power to kill in caife of opposition ; *Igitur.*¹—It was continued till November nixt.

A. fol. 105,
No. 226. 27 Julij 1671. In Sir Androw Ramsaye's busines about the sale of the Bas to his Majestie, the King's Advocat was induced to attest the disposition made by the Provest to his Majestie of that Ile to be a sufficient security, and that the Provest had a valid and good right theirto, under his hand ; tho he alledged, it was a thing no Kings Advocat ever before him had been in use to do, yet he would say nothing verbally save what he would also give under his hand.

A. fol. 106,
No. 231. About this tyme, and after, their was a great rumor about the changing of the Dyets of the Seffion, by taking away the 2 moneths of Summer seffion and adjecting them to the Winter, which was thus to fit 5 or 6 moneth togither, and all the remanent of the year to be vacance. Much was plead for the conveniencie of such a alteration, but if the inconveniences that would ensue theiron be also impartially weighed, in my judgement

¹ Yet the S. Counsell has exp ained their oun act, that it means only to sink the cargo or meall, but not the men.

they præponder; for 1^o, *Omnis mutatio etiam in melius est periculosa, et in rebus novis constituendis evidens et summa earum utilitas esse debet, antequam recedatur ab eo jure quod diu æquum visum est: l. 2. D. de constitutionibus principum;* and our predecessors who modelled a Summer and a Winter session, ware every whit as knowing and as rationall as we.² 2^{do}, If the Session fit doun on the 1 of October, then ye call in the liedges to Edenbrugh in one of the throngest moneths of harvest that they have, which by law is ever appointed to be feriat tyme: *l. 1 per totum D. de feriis, item toto Titulo Codice;* and tho within thesse 15 or 20 years we have learned from the neibhour English, to labour sooner, wheirby our harvest is more early then it was wont to be, yet their's no man will deny but the moneth of October (and this very year is a demonstration of it) wins much of the cornes in Scotland; and the like inconvenience shall follow, if ye take in the moneth of March, which is the hottest moneth for labouring the ground in the year. 3^{to}, The weill of the kingdome's Metropolis, of the citie of our solemnities, most also be heir confidered, in sua far as it draws not with it any confiderable prejudice to the rest of the countrie; and Menenius Agrippa his Apologe to the Commons of Rome would be remembred:³ the rest of the members will not do weill to withdraw sustenance from the belly upon the envious pretence, that they have all their severall functiōns and offices tending to serve it, and that it's idle, for in famishing it they'le famish themselfes, and in what proportionall degries it decresces shall they diminish by thesse same. Edinburgh is the center wheir our gentlemen's younger children terminat for education,

² And old customs, like old lived men, are presumed to be of a sound, equable, and wholesome temperament and constitution. By the Toune Counsell books it appears, in 1630, endevors ware made by some for a change of the Sessions course, (tho I believe not this that's intended now): the Counsell writs to Mr. John Hay, their Commissioner at London, to deall with his Majestie stop the same.

. . . . that their being mewed up w'in Toune 2 of the pleasantest moneths in the year, and in effect that which is all the Summer we have in Scotland, is most destructive to our healths, and impedes hudgetly the improvement men might make of their estates, and thesse who are at any distance, have no benefit of them at all, but most furnish themselfs at Ed^t; yea the Summer session is the cause of all our prodigality in apparell, housse mails, and otherwayes, yea its abolishment might be instructed would be 20,000 lb. sterling a-year in the liedges way.

³ *Livius, lib. 2^{do} pag. 27. Plutarchus in Coriolano: Florus, lib. 1. cap. 23.*

and by ane amicable reciprocation the circumferences of this center reaches againe over all the country ; and their be few gentlemen in Scotland who have not some intres theirin, either by being ishuued originally theirfrom, or by having some of their twigs engrafted theirin, so that its deservedly accounted the *communis patria* of all Scotsmen ; and hence the testaments of all dieing out of the countrie are confirmed their ; persons furth of the country are summoned their, and such like.⁴ Yea, what priviledges and badges of soverainetie Old Rome had, the same, by common consent of all nations, have bein stated upon the respective metropolises of kingdomes ; now to fetch so intolerable a prejudice (as this would prove) upon Edinburgh, for satissieng the lust and pleasure of some few pretending themselves to be interested theirin, ware a thing immeasurable unjust, and which in no æquity can be craved ;⁵ especiallie considering that the wholle country, within 30 or 40 miles of Edinburgh, yea the wholle north and south, the one for their lambs, and the other for their cornes and ky, would be so far from having any benefit from such a change, that, to the contrarie, the same would redound hudgely to their losse and disadvantage, in so far as their would be no such consumption of victuall and thesse other abovementioned commodities in that case as now, seing bear and ale are most drunk in the Summer ; and if the Session late onlie in Winter, all who could reach wine would rather drink of it ; yea by it the King would be hudgely prejudged in his customes of wine, cloath, and filks, for which their would be no such vent as is now ; but the King hes dispenced

⁴ *Vide infra*, num. 387, in the duply. [Edinburgh case.]

⁵ See 16 reasons against the taking away the Summer Session in a paper besyde me, drawn by way of information for the Members of Parliament in August 1681, tho the Parlia^t then, by their act, without respect to thesse reasons, took the Summer Session away.

That its absurd to think a nation for the space of 6 or 7 moneths togither should want a visible form of a Supreme Court of Justice.

Yet they pretend the Toune of Edinburgh will have no prejudice, because the winteners declare they had rather have one moneth more in winter, then the tuo moneths of Summer Session. 2^{do}, This orderly way of discussing causes by the book enrolment, will demonstrate, say they, the unnessariness of the Summer Session, since the 4 moneth of winter, at leist 5, will discusse all the causes in . . . us in a short tyme to rising at ij a cloak for want of ado ; especiallie that part of the regulations being observed, that no causes within 200 merks be pershuued in the first instance before the Lords.

with his part of the losse by the sumptuary law now past. 4^{to}, The spirits of men, like to bows, if they stand in continuall benfell, they slack and spoile; and, theirfor, the very four moneths of the Winter session as it now stands, ware judged to long for the Lords and Advocats heads to run constantly on busines, and the Zuille vacance was introduced, not so much upon a principle of religion, as for a relaxation to men's minds; and if the lenth of 4 moneths afford *tedium* and *laffitude*, whow much more if it ware 6. 5^{to}, If a man suspended a charge of horning in January or any of the moneths ensueing, he might, by this new modell sing a requiem to himselfe till that time 12 moneth, for sooner *per rerum naturam* it could not be heard; but, as it stands now, such suspensions may be got discut in the Summer session; sicklike, if I wairne a tennent to remove at Whitsonday, I could not by the said overture get the legality of my warning declared, nor a decret of removing sooner then Nov^r or Dec^r, wheiras now I may have my decret in my hand ere the last of July. Nather salves it the inconvenience to say, I may pershue these things before the inferior judges who sit at all tymes; for 1^o, their be many actions to which they are not competent; 2^{do}, in the rest the defender will ather procure them advocated or suspend them; now, whow great prejudice the liedges may sustaine in the delay of their actions which merit summar proces, is very conceiveable,—I shall only give one instance: Conforme to the late Act of Parl. I charge my debtor to the effect I may theirafter comprise and come in within year and day of some anterior comprisors; the debtor gets my letters suspended simplie, (which will comprehend a suspension of apprysing as weill as of personall execution,) ere I get the suspension discut, year and day expires, and so I losse my diligence, and the benefit of the Act of Parl. anent comprising within year and day, and will have right allenarly to the reversion. I think the debtor's dole and *mora* in suspending, ought not to postpone his diligence. 6^{to}, *Nihil tam naturale est quam eo genere quidque dissolvere quo colligatum est*: l. 35. *D. de Reg. juris*: *Igitur*, the Diets of the Session being establisht by ane continued series of Acts of Parlia: renewed from tyme to tyme, the same cannot be altered by our Lords Regulators, nor by the King, except in face of Parliament assenting theirto. 7^o, Tho it appears by Act of federunt on the 20 of Januar 1586, and other places, that the Diets of the

Sesson have bein otherwayes conftitute then they are now, yet they cannot say but their was ever a Summer sesson. And the Regulators would remember, that they have wronged the Toune of Edinburgh eneuch already by their regulations, (and by nothing so much as that of the enrolment, tho a secret stroak,) tho they do not this additionall wrong too.

A. fol. 116,
No. 272.

Novembris 24, 1671. When I confider with my selfe the small beginnings of the Colledge of Justice, with the then Lords their mean salaries, and compares it with the great bulk they have swelled to now, it feimes to deserve its ounе roume that we take a litle notice of the progresse. The first thing that ever was doted to them was the soume of 1412 lb. Scots yearly, imposed upon all the benefices and praelacies within the kingdome,¹ condescended unto by the Pope and churchmen, in regard, by the erection, the President and the halfe of the Lords ware ordained to be of the Spirituall estate. This was called the contribution money, and is exprefly ratified by A& of Parl. of Q. Marie's, in 1543 ; and whow it was ajusted of old, appears by the A&s of federunt at the 2 of Aprill 1586. It yet continues ; and what every Lord's proportion falls to be, ye may learn from the federunt books on the ij of June 1663 ; and, in the old federunt Registers, their are many bonds of cautionry given in by the Prælats, Abbots, Commendators, Prioresses, Lords of Erections, and other possef-fors of the great benefices, for the pun&tuall payment of the contribution due to the Lords furth of their benefices. Thus the Lords continued till the 18 of Februar 1562, having scarce 100 lb. the piece ; at which tyme the Quean (as appears by the books of federunt) promises faithfully, by hir letter, to augment the Lords gages ; for implement wheirof, on the 13 of Aprill 1564, by hir gift, she grants them of additionall salarye 1600 lb. Scots to be uplifted out of the Quots of Testaments confirmed by the Comifars, who ware then but newly erected, upon the suppression of the Officialls ; for the making of which gift effe&uall, many consecutive acts of federunt ware made, (as appears by my summarie;) as also for eviting fraudulent confirmations, and forceing thosse who ware unwilling to confirme. The escheits of all who ware denunced for not confirming, ware

¹ Sie the originall of the Colledge of Justice, deduced *ab oeo*, elsewheir besyde me.

gifted to the Lords by ane a&t of the ij of Dec. 1579 ; and the haill power of choising the Comisars, and their officers, was devolved over on them, *ut paffim patet ubi supra.* I find also at the 18 of Nov^r 1583, they had 40 shilling payed to them by him who tynes the plea, conforme to the A&t of Parliament theiranent, *viz*^t the 49 a&t *in anno 1471*, which was renewed by the 43 A&t in 1587 ; and I find they came only to exact it in 1567, by ane A&t made by them on the 12 of Nov. the said year. Thus things stood till the year 1609, that Bischops being restored to their former dignities and priviledges, then, by the 6^t A&t of that Parl., the Quots was tane from the Lords, and given again to the Bischops ; and in lieu theirof, by the j A&t of that same Parliament, 10,000 lb. is dissolved yearlie from his Maj. customes, and gifted to the Lords. Then in 1633, a&t 22, their is 40 shilling laid upon every pound land within the kingdome, to be lifted at 4 severall termes, and then to be made up in a stock, and put out in annuel rent, for the use of the Lords of Seffion : and, by the 26 a&t of the same Parl. the former acts, allowing them 12 pence of the pound in any decret, are explained, that it shall be payed not by the obtainier, but by the other partie. Then sentence-silver was abolisht by A&t 55 *in anno 1641* ; which Parliament was *funditus* reschinded in 1661. Heir they stood till his Maj. happie restoration in 1660 ; and then by the 50 A&t *in anno 1661*, their is a fstock of 12,000 lb. sterling granted them, to be uplifted of the countrey by way of taxation ; and that, because the 20 penny of sentence-silver tane away as ane unæquall burden laid on the purshuar, (tho we have fein the contrarie by the 26 A&t in 1633,) and that their was not 100 lb. Sterling to give them a peice. Then, over and above all thesse former grants, his Maj. added 10,000 lb. Scots *per annum* more, to be payed them furth of the readiest of his customes ; and that by the 7 A&t *in anno 1662*, wheirof they had a promise from my Lord Middleton, then Commisioner, on the 4 of June 1662 ; all which donations conjoyned, makes to each of them 200 lb. a year.¹

¹ In 1672, it was noiced the Lords ware to get a gift from his Majesty, for augmentation of their salaries of all the few maills and few fermes of the superiorities of kirklands throw Scotland, which, by act 10 in 1633, are declared redeemable from the titulars, and possessors, by

From the admissons of Mr. David M'Gill of Cranston-riddell, and of Mr. Thomas Hamilton of Drumcairne, in his Hienes Advocats, the one on the 27 of June 1582, the other on the 14 of Februar 1595,¹ I find the King's Advocat had 40 pounds Scots of fie and salarie paid him yeirlie out of his Majestie's chekker; as also by ane a&t of the 3 of March 1595, they had right to the King's halfe of all confignations and penalties imposed upon any partie in Improbations, whether be way of action or exception.

A. fol. 120.
No. 287.

8vo Decembris 1671. *The Archbischop of S^t Androis, contra Patrick Lindsay of Wormeston his Comisar.*—This was a pershuit against the Comisar for releiving the Bisshop of 303 lb., as his proportion of the contribution money due to the Comisars of Ed^r, of all years since 1661, and in tyme coming. Alledged, their can be no releiff, because they have never bein liable theirin *de facto*, nor in law can be; nather by the Decreit arbitrall are they, but the Bischops themselves, burdened with that 900 mks. of augmentation given to the Comisars of Ed^r, upon the accompt of the losse they sustained throw the want of the great Testaments; and as for the old duety, which was 1200 mks. payed to them, the subject matter of that was ever the Quots, and when the Quots was in Q. Marie's hands, and after given to the Lords of the Seffion, this 1200 mks. was ever payed furth theirof. As for the Act of Parl. 1609, and the Injunctions following in 1610, and the late Injunctions in 1666, ordaining the Comisars to reieve their Bischops of the contribution money, they can never bind this defender, because the Injunctions 1610, did not keip within the bounds limit for them by the Act of Parl. 1609, which was only to fet doun the manner of the Comisars proceeding with the formes of proces, and in so far as they deviat from that, they are without a warrand. 2^{do}, The said

his majesties payment to them of 1000 mks. for ilk chalder of few ferme they be so many nobles and gentry concerned in this that prove a dangerous point. If the Lords of session deserve enlargement of their fees, from the country whosse priviledges they are so carefull of, &c., I shall not determine.

¹ Sie the sederunt of the 8 of January 1583.

Injunctions 1610, ware never *in viridi observantia quoad* this releiff. 3^o, The Injunctions 1666, are since the defender's gift and *jus quafitum*, which cannot be burdened without his oune consent. 4^o, The most that all thesse Acts and Injunctions can infer is, allenarly, that the Comisar releiff him of his proportion of the 900 mks. of augmented money; but their's no ground for relief of the old duety, which was ever payed out of the quotas, and so by the Bischops who received them. Sie the answere to this in the Informations, as also about the Bisshop of Glasgow's decret against his Comisar, and the Act of Parl. procured by the Comisars of Edr for paying their fees out of the Bisshop's rents. After many hearings, the Lords, before answere, ordained the Decret arbitrall to be produced: then the matter was trysted; the Comisar was content to releiff the Bisshop of the wholle for the future, and the Bisshop was to procure to him a generall discharge of all bygains from the Comisars of Edr.

In January, this seffion, was called the action pershued against the Toune of Edr by James Dundas and others, the creditors of Park Whythead, for payment of their respetive debts; because he having bein incacerat within their Tolbooth of the Cannogate, he had escaped. Against which it was alledged, that the 173 A&t of the Parl. 1597, appointing all Brughs to have sufficient goalls for detaining of prisoners, most only be understood Brughs Royall, (who, in regard of the many priviledges granted to them by the King and his ancestors, most not complaine of this burden imposed on them,) but nowayes of brughs of regality, such as the Cannogate is,—that brughs of barony first are not bound to accept the King's rebels offered to them—nixt, tho they receive them and let them escape, yet they are not liable for the debt. *Vide* D. 13 Martij 1623, Moody *contra* the Bailzies of Dunce; *item*, 12 Febr. 1624, L. Langton cont. the Bailzies of Dunce; *ergo*, the same most obtain in a brugh of regality, their being no assignable disparity. To this it was answered, whatever exemption brughs of regality may pretend to of being frie ather to accept prisoners or not at their pleasure, (which is not leafum to brughs royall,) but *estlo*, it be *voluntatis ab initio*, yet having once accepted them it becomes *necessitatis*, and they most answer for them, else the liedges

should have no security; but this neids not be reasoned now, seing it was debate *in foro contentioſiffimo* for the Toune of Falkirk against James Hamilton, merchand in Edenbrugh, in 1668, that being only a brugh of regality they could not be liable for the escaping of prisoners, and the Lords found, they ware answerable for all they receaved; and tho the same was alledged in behalfe of the Toune of Falkland, pershued *actione hac ſubſidiaria*, by Mr. Ja. Cheap, yet ware found liable notwithstanding. But for Falkland it feimes to be a brugh royall, as I obſerved *ſupra*, at number 132. My Lord Caſtlehill repelled the ſaid alledgeance made for ther Toune, and ordained us to fay farder. *Vide* the reſt of the debate, *infra* num. 374.—Yet by the conſequence of the decision marked by D. 21 March 1627, Earle of Caffills, tho none beneath bailties of regalities are lyable to obey theſſe charges, yet they are, as alſo appears from the 19 of Nov^r 1628, Ray *cont.* Douglas.

A. fol. 153, b. 16 November 1672. In the ſubſidiarie aſion, mentioned *ſupra* at No. 374. In the ſubſidiarie aſion, mentioned *ſupra* at number 331, perſhued by Ja. Dundas and others, againſt the magiſtrates of Edr, for ſuffering Park Whythead to eſcape out of ther priſon of the Cannogate, the defence then proponed by us being repelled, we alledged, 2^{do}, abſolvitor from this perſhuit becauſe nather fraud, negligence, conni- vence, nor insufficiencie could be any way qualifiéd, ather againſt the pri- ſon, the jaylor, or the magiſtrates defenders, in ſo far as the manner of the rebell's eſcape was truly in law *vis major, et casus improvitus et fortuitus*, which could not be obviat by common human proviſion, and which the magiſtrats *non tenentur praeflare*, in ſo far as the Tolbooth of the Cannogate is moſt ſufficient, and in the ſame condition it hath bein now paſt all memory; that this rebell was keipt with more jealouſie and ſtri&nes then any other priſoners for civill debt ware; that the manner of his eſcape was by winning into the bell-houſe, and towing himſelfe doun from a window theirof, 5 ſtory hy, which no rationall man that had any regard to his life would attempt. To this it was replied, that in his eſcape the negligence and carelefnes of the keipers did no les evidently appear then did the in- ſufficiencie of the jayll; for 1^o, the jaylor was adverтиſed of his deſigne to

¹ *Vide infra, numero 473, Captain Martin.*

escape, and theirfor was required to keip him in the iron-houſe, and which he obeyed not; 2^{do}, it was a palpable negligence that he suffered tows to be brought in to him; 3^{to}, it was blameable that he permitted him to have acces to the bell-houſe; 4^o, as also, that ather he ſhould have got the key or its impreffion; 5^o, the prifon's weaknes is clear in this that his escape was made without the leaſt violence done ather to door, window, or wall, and ſo cannot be termed *vis major*; 6^o, its insufficiencie is yet farther demoftrable that their was no ſtanchells in the window out at which he escaped, and that they have ſtanchelled it fince; and that a woman im-prifoned in that Tolbooth, for being ſuſpe&ted as acceſſorie to the murder of Mr. Bedford in Leith, escaped furth theirat of before, and ſo could not be ſuch ane desperat attempt as was never undertaken; 7^o, their was no ſuch hazard in the deſcent as was repreſented, because their is tuo flat rooffs in the way upon which they may reſt in the doun coming. Sie all more fully in both parties Informations. My Lord Caſtlehill, before anſwer to the relevancy of the debate, and muſuall condeſchendances made by both parties as to the manner of the escape, ordained them both to adduce witneſſes for proving the points of their muſuall condeſchendances, (for tho conju& probation be very dangerous, yet in defences and replies ſimply confiſting *in facto* as this, its both ordinar and just.)¹ I delt ex-treemly to have had it allenarly, ane a&t before anſwer as to the wholle, both our firſt defence founded upon its being only a brugh of regality, and this 2^d founded on the caſuall way of the escape, and not to have bein in ane a&t of litisconteſtation; but the perſhuars oppoſed it, that ſo they might get us bound in ane a&t of litisconteſtation, and I could not prevail, in regard defences confiſting *in jure* cannot be reſerved before anſwer, but their relevancy moſt ever be diſcussed and premiſed to the probation of points ſtanding *in facto*. The probation being closed, and in the beginning of November 1672, being adviſed, and the Advocats called in, and the perſhuars having reſumed the caufe and enlarged the articles of negligence and insufficiency afforſaid, it was anſwered for the

¹ And which the Lords requires oft in ſuch caſes, ſie D., 6 of July 1631,—*cont.* Bailies of Perth, w^t its marginall citations, and which might have bein pertinently urged in this caufe.

defenders, That the ground and foundation of this subfidiary action in law is ather the insufficiency of the prison or the neglect and default of the keiper. As to the 1st, it was weill knownen, that the Tolbooth of the Cannongate had bein a most sufficient prison, past all memory, and few better in the kingdome, and wheirin hundred of prisoners for civill debts, and malefactors upon criminall accompts, have bein safely detained and never able to make their escape; at leist it was now, and at the time of the rebels escape, in the same very case and condition, and als strong and as weill in repair now as it was at the beginning or hath bein at any time since past memory. As to the 2^d, their's no qualification of negligence can be justly enforced upon the jaylor, for it cannot be instanced that ever a prisoner for debt did attempt so dangerous ane escape; and as for the woman they instance, 1^o, she was imprisoned for a capitall cryme; 2^{do}, in the escape she fell and so bruised her selfe, that wⁱn few dayes she dyed:—And as to the bringing in of ropes, it's supposed to be proven by the witnesse deposicions that they ware knit togither of many peeces, the inbringing wheirof no keiper of prisoners for civill debt could obviate or remeid, seing they may bring them in unto their breeches, or wrapt about their waft; and no keiper hath power to search them, tho he did suspect them, as he cannot probably do; likeas he can hinder none from having acces to such prisoners; as to the window from whence he came, it was ordinar for prisoners to escape even out of the Castle of Edenbrugh, and yet none will think the Castle ane insufficient prison for all that; that the measures of thesse things ware not to be taken from what desperation and hard usage might prompt one man to, but the generall rule of law was what the most of men, or a rationall man would undergo in such a case: That the rebell, concerning whosse escape they now controvert, was driven to that despair by the unusuall stri&tnes and severity of the pershuars, in causing keip him in the iron house¹ as if he had bein ane malefactor, so that the keiper is so far from deserving censure for his remissenes, that if he ware to be punish't at all he rather deserves it for his crualtie to him, and which he used by some of the pershuars their instigation allenarly; and

¹ We caused make a most diligent search for finding out the rebell, that so we might have sisted him againe *in eadem causa*,—yet the Lords have never sustained that as sufficient to asoilzie

hoped it was clear, by the witnessses adduced, that he was better and more narrowly watched then any other prisoner. Likeas the witnessses adduced for the Toune are far more famous and honest persones, and to whom more credit was to be adhibit as more pregnant and knowing then the pershuars, in so far as some of them ware fellow prisoners w^t him at the tyme of the escape. The Lords upon this debate, (which was on the 9 of Nov^r,) and after confideration of the testimonies, found no fault nor negligence of the jaylor, and theirfor affoilized him and the magistrats upon that accompt; but before advising of that member of the insufficiency of the prisone throw the not stauncheling of the window, wheirat the rebell escaped, they ordained the Lords Colinton and Newbayth to visit the said prisone window, and to consider if a prisoner might, without danger, make his escape furth of the said window by the help of tows; and they to report their opinion theiron. We ware very glad at the gaining of this step, taking it for a good omen to the wholle caufe; but we did not at first discover my Lo. President's designe and draught in it:—He had bein stronglie solisted by his Ladie in behalfe of Daniell Rose the keiper; therfor, for securing of him, he past the first part of the Interloquitor affilzeing him from all fault, but resolved in the last part to ensnare the Toune, and find them solely liable for the debts upon this ground of the prison's being insufficient, and this to gratify the Dundasses, for whom Sir Jo. Dalrymple and his Ladie agented shamefully. But when we felt his breath, it made S. A. R[amsay] bestir himselfe more actively w^t the rest of the Lords to break the President's project, and who was concerned for reasons of state to sie it succeid weill, his ennemis at that tyme, as S. G. L[ockhart] told me, lying at a wait for this advantadge against him, yea wishing and soliciting the Toune to lose the cause; whovever, bous rolled

magistrats. So Dury, 27 Martij 1623, Smith, and 22 Januar 1629, Scrimgeour, tho the same be dounright contrare to the common law, L. 8, p. 9, D. *de paenis*. *Carcer ad continendos homines non ad puniendos haberi debet*: but our reason in making the prison a part of the punishment is, *ut squalore carceris*, they may be at lenth forced to pay their debt; but if this ware a good or adequat argument, then, to make it truely irksome and loathsome to debtors, prisons should only be built in most noxious and unwholesome airs, their dyet should be restricted, and all other severe courses followed that may render their life grievous and wearisome to them. L. 2, C. *de exactoribus tributorum*.

so weill, that whither throw importunitie, or throw a timorousnes of nature, the forsaids 2 Lords reported verballie this 16 day of November, that their was hazard in the deschent, tho the pershuars and sundry others offered to go out at that same window, and come down without the leift hurt or cause of fear of danger ; wheirupon the major part of the Lords affoilzied from the haill libell. When the cause was first consulted, S. G. L. was mighty diffident of it, abusing Daniell, and telling¹ it was impossible but the Toune would tyne it, and be found liable, and recommended to me to fie [that] the debts, hornings, captions, and arrestments ware clear, that as litle debt might be fixt upon the Toune as could be : yet Mr. G. Norvell had ever hopes of it. But we had so good a care of the probation, and manadged it so dextrously, that when we came back with the depositions to him to advise, he became more confident, and asserted, If the Lords judged aright and confidered all the qualifications of diligence proven, and especially that the prison, tho it ware insufficient, yet that it was in as good case now as at the first building or ever, they could not but affoilzie. The President was in a great chaff, pretending the absolvitor was contrare to all law, and that if such slender grounds as thesse ware sufficient to frie and acquit magistrats from thir pershuits, their shoule never be magistrats found liable to the world's end ; and that in the like cases their hes bein stronger condescendances made and more pregnantly proven for defenders, and yet they condemned ; and theirfor would not insert it as a pratique in his book he was composing of his daily observes. The judgement and censure of the advocats upon this decision was various, (as it's in moft other cases,) but many condemned it as strange and dangerous.² Incase we had loft that part about his casuall escape, we was resolved to have recurred and quæstioned the relevancy of that pairt of their sumonds, wheirin they craved³ not only the jaylor and bailzies of the

¹ That the jaylor is liable by the common law, *vide l. 4 c. de Custodia reorum*, yet that law seimes only to be aenent malefactors.

² We was also resolved to have craved absolvitor from annuelrents since the horning, on Durie's decision, marked 29 June 1626, Haliburton, &c.

³ *Pænæ dependæ non solent repeti*, *Lege 42, D. de condicione indebiti*, and so the bailzies of the Cannogate could never in law have recurred upon the magistrats of Edr their constituents.

Canogate to pay them their respective summes, in respect they had suffered the rebell to escape, but also the provest, bailzies, councell, and commony of the burgh of Edenbrugh, as Lords Superiors of the said regality and barony of Canogate, and from whom the bailzies theirof derives their power, authority, and jurisdiction, and so are liable for their maleversation; and also as the persones from whom the said jaylor hes his commission, and to whom he hes found caution, and so most answer for his negligences and omissions; and which was intire unto us in respect of a reservation, contained in the act of litiscontestation, of all our other defences, which I think was scarce regular,—but we ware not put to this dead lift.

Anent the Toune of Edr's Charter in 1636.—About this tyme [9 Feb. fol. 129,
ruarij 1672,] I had occasion to sie the Toune of Edr' their great Chartor,
No. 322.
granted to them by King Charles in 1636, with the seafine tane theiron in
1637. It's a new gift to the Toune of their brugh milnes, common moore,
port and harbery of Leith and Newhaven, superiority of Leith, dock-money,
anchorage-money, golden pennies, &c., office of shireffship and justiciary
of peace, within their toune and liberties, &c., with a ratification of all
their former infestments: as for the badges of honour and soverainety (so
to speak) conferred on the Provest and other magistrats of the City,—
viz, the fword, scepter, and rid robes, thesse are by the grant of King
James the 6^t by his charter under the Great Seall in 1621, and that on the
parrallel of the Lord Maire of London. Many persones are of the opinion
that this last Charter in 1636, hes done the Toune much more hurt then
good, because it hes ather cut them of expressly from fundry privileges
comprehended in their ancient infestments, or prejudged them theirof in
so far as they are altogether omitted in this. I shall instance only one;—
Craig, in *Dieg. de Regalibus*, pag. 117, tells, that the Toune of Edr', by a
speciall privilege, are indulged the escheat of all condemned within their
brugh and liberties for slaughter; and, *idem*, page 121,¹ tells they have the
power of having and reteining their oun fisck, yet, by the charter 1636,

¹ *Vide* Balfour's Practiques, Title of Burrowes, cap. 20.

the escheits of all persones condemned within the Toune are specially reserved to the King, and the Toune for ever excluded theirfrom.

See more of the Toune of Edinburgh's Charter in a 4^{to} manuscript marked A. 4, page 32.¹

A. fol. 135, b. No. 344. 22 Junij 1672.—This following point went to Interlocutor:² Whither or no a *de novo damus* from his Majestie does not import to the wassell receaver a discharge, liberation, and exoneration of waird, marriage, few dueties, and all other casualties due furth of theſſe lands, preceiding the date of the ſaid charter. Tho this was lookt upon as a principle wheirin their could be no controverſie, yet it was alledged by ſome, that unles it ware ſupercryved by his Maj.'s oune hand, he could not be prejudged by ſuch gifts, and that the ſlouth or negligence of his Officers of estate could infer no wrong to him. *Vide* the 14 Act of the Parl. 1600. This is a miserable and pittifull way of wenting our wit, by ſhaking the very foundations of law, and leiving nothing certaine. But the true ſource of all is from the wofull diſſions in the Houſe, eſpecially betuen the Preſident and the Advocat, each of them raking, tho from hell, all that may any way conduce to cary the cauſes that they head. *Flectere ſi nequeo ſuperos, &c.*
—*Vide infra*, num. 361, thir ſame parties.

A. fol. 147, b. No. 361. 9 Julij 1672. The Thesaurer-depute, as he who hes obtained the gift of the marriage of the late Earle of Dundy, which marriage exifted throw the deceis of the Lord Dudhope, father to the ſaid Earle, perſhues declarator for the availl of the ſaid marriage againſt my Lord Dundie's wholle creditors. In which a&tion, it was alledged for the Earle of Northesk, that no marriage could be declared againſt him, nor could the availl theirof (whatever the Lords ſhall modifie the ſame at) ever affe&t the lands of

¹ From the Counſell Books of the Toune of Ed^r in 1629, &c. I find they had procured a chartor in 1603, with many ſtrange clauses and privileges, *viz*^t right of regality, admiralty, right of the north Castle Bank as weill as the ſouth, and verie prejudiciale to the gentlemen of West Lothian, which they were necessitat
..... It was ſore againſt the Toun's heart and will that they altered ther former chartor, but they ware forced to it.

² The parties in this ware the Earle of Northesk and others, and the L. Hatton, Thesaurer Depute.

Craig, which ware transmitten to him by progres from the said Earle of Dundee, whosse marriage was now sought to be declared; because upon the said Earle's resignation, and a signator superscryved by his Maj.'s oun hand, he stood infest in thesse lands w^t a *de novo damus*, which most import to him ane exoneration and discharge of all casualties, due furth of thesse lands preceiding the day and dait of the chartor.¹ The Lords found the *de novo damus* did not discharge this casuality of the marriage, because their being many casualties named in the said clause, viz^t, wairds, releifs, non-entries, escheats, forfaultors, bastardries, recognitions, last air, &c. the marriage was not expressed; and as to the generall clause wheirby his Maj. gives, grants, and dispone the said land and all right, title, entres, or clame of right he hes theirto, by whatsomever manner of way preceiding the date of thesse presents, they found not that sufficient to beir a discharge of a marriage, because the King transmits nothing by thesse generall clauses, and he can give nothing away but what is specially named; that a *de novo damus* secures allenarly the property of the land, but does not secure against prior casualties, because his Maj. cannot be prejudged by the negligence of his Officers.

I never observed ane interlocutor so generally displeas as this did. I found no lawyer, nather great nor small, would oun or feik to justifie it, but all cryed out that the foundations ware shaken, the security of the liedges was overthrown, all their rights ware branled; that the scruing up the casualties of superiority at this rate, would make the wholle kingdome think the King the worst and the unsurest superior they can hold of: It made all in mockery speir who was pershuar, and if he had a brother. My Lord Halton's oun advocates confess it was horridly arbitrary and unjust; Sir G. Lockhart, who was one of them, asserted that his goodfather would have quite his land sooner then past such an Interlocutor. I never heard it doubted but a *de novo damus* did cut of all bygains that they could never be sought, that it had bein ever so advised by all lawyers that because it excluded his Maj. from

¹ The farder arguments that ware urged, especially from the pratique in 1611, and Peirston's Practique in 166., are to be sein in the Informations beside me.

all preceedings, theirfor the composition was raised considerably hier then what it used to be in ordinar cases wheir that clause was put in ; that it past for an uncontroverted principle, (if so be we have any in our law,) that if a subje&t superior give a chartor to his wassell with such a clause, it undoubtedly cuts him of from all he can claime out of that land preceeding its date ; that a *de novo damus* is a originall gift, and hes all the words of a new donation, *viz^t, exonerando, transferendo, et extradonando* ; that the King gives the land by this clause *prout optimus maximus est*, and so frie from all antecedent encumbrances ; that ther finding the marriage not to be discharged because not exprest, was nougnt save a silly evasion, seing tho not one of them had bein enumerat, they ware all cut of theirby ; that the just bounds of all things ware confounded ; that strange things ware hurried throw in Parl., and things as strange ware advised w^t close doors in the Seffion, and reported again at fyde bars ; that no man talk of decissions after this ; that all other decissions, tho blameable, could shreud themselfes under some cloak of law, but this stood naked : none was found who would ather ounre or palliat it : That the leist they can modifie the avail to will be 20,000 m^tks., seing he got that in tocher w^t Dalhoufie's daughter ; that he'll betake him to any one creditor he pleases, and affect his land theirwt, the same being *debitum fundi*, and will leive him to his releiff of the rest ; that the pershuar being likewayes donator, and having the gift of *ultimus hæres* of the said Earle as his air, he most warrand the rights and infestments granted to them by his predecessor, and so this gift of the marriage can no more prejudge them then if the deceift Earle of Dundee, their debtor and author in the lands they posseffe, or any to his behooff, had procured the same. That he may not renunce the same now to their prejudice, fince he hes made use of it already. *Vide inf. num. 368.*

A. fol. 148, b. About this tyme, [11 Julij 1672] in the recognition pershued by the
No. 368. Lord Thesaurer-depute *contra* the Earle of Northesk and the other creditors of the Earle of Dundy, the Lords found the lands of Craig had recognosced in his Maj.'s hand, throw a disposition theirof made in anno 1659 by the Laird of Craig to Pitarrow, and a base infestment taken theirupon : notwithstanding it was alledged, 1°, That, *ante omnia*, my Lord Halton ought to make patent to them the charter kist which he had

got delivered to him, to the effect it might be tryed from the old evidents and chartors whither thesse lands held waird, yea or no, and which might furnish them w^t many other defences; 2^{do}, that the disposition made to Pittarow could never be the ground of a recognition, because it was reduced, and *funditus tane away* in Parliament, which annulled it *quoad omnes effectus*, as if it had never bein; especially seing it was reduced *ob defectum consensu*, it having bein elicit from him when he was drunk so extreemly that he had not the use of his reason; for the reduction of a disposition of waird lands, and of a base seafine tane theiron, because of informality, not registration or the like does not hinder the incurring of recognition, because the wassell *fecit omne quod in se erat*; yet if such a right be reduced for want of consent, then no delict is committed,¹ (seing *animus et propotum faciunt maleficium*,) the wassell is not guilty of ingratitude, and theirfor ought not to be punished w^t the tinsell of his lands; and it is the same as if ane idiot or furious persone should alienate waird lands without his superior's consent; in all which cases, *animus delinquendi præcipue spectandus est*.² The Lords, before answer to this alledgeance, ordained the grounds and warrands, and other minutes of that decret of Parl. in 1661, to be produced before them; (tho I cannot sie what power or right they had to call for the warrands of a decret of Parliament, or to try and canvasse upon what grounds the same proceeded, and if they ware warrantable and rationall): and on perusal of the depositions of the witnessses wherupon the said decret proceeded, they repelled the defence, in regard it appeared from the testimonies that Craig's drunkennes, the time of the making of that disposition, was not so deip as that he was wholly bereaved of fence and reason, but that he acted by a will and consent, tho not altogether so clear. 3^{do}, It was alledged that it was granted the tyme of the Usurpers, when all waird holdings ware discharged, or it was agriable to the Act of Parl. in 1641, then standing unreschindled, which appointed all such lands to be holden feu; and betuixt the tyme it was granted and the tyme of its being questioned in Parlia-

¹ Vide o^o [omnino] Craig, lib. 3 pag. 344.

² Sie the Informations beside me, and supra nu. 361, item *infra* page [num.] 372.

ment and reduced, their ware no judicatories fitting wheirin he might have obtained it confirmed ; likewayes, if it had not bein annulled by a decret of Parliament, he would have obtained a confirmation theirof long before the date of the pershuar's gift of recognition, and so would have excluded the same.¹ Notwithstanding of all thir defences, the Lords found the recognition of the lands of Craig incurred.

As for the barony of Dundie, it was alledged, that the deeds founded on could never infer recognition theirof, seing they ware far wⁱin the halfe of the said baronie as to it's ancient extent. Wherunto it was replied, that in the computation of the totall of the barony no lands wheirof their was publick infestments granted, ather by resignation or confirmation, could be repute a part of the barony, because they ware theirby dismembred, and the remanent could only be esteimed the barony, the major part wheirof was alienat. Duplied, The Earl of Dundy retained the *dominium directum* of thesse lands, and they behoved still to be repute parts of the barony, &c. The Lords found, the alienation of the major part of the lands remaining unresigned and unconfirmed made thesse parts of the barony to recognosce, and theirfor repelled the alledgeance. But the truth is, the Lords ware so stated at this tyme, that hardly any thing could have bein proposed against this recognition,—over the belly wheirof they ware not inclined to go.

A. fol. 150, b. November 1672.—In the declarator of recognition mentioned *supra*, No. 372. numero 368, pershuied by my Lord Thesaurer Depute ag^t the Earles of Northeik and Weimes and fundrie other persons, it was alledged for Weimes, that no declarator could pas in his prejudice, because he stood infest in ane annuelrent furth of thesse lands confirmed before the gift of recognition. This defence at first proponing was found relevant, but theirafter it having bein answered by the pershuer, that they behoved to say confirmed before the incurring of the recognition, wheirupon the gift is grounded, the Lords repelled the same in respect of the answr or

¹ As also, notwithstanding it was alledged that Pittarrow was Craig's appeirand air, mediate at leist, to whom alienations do not infer recognition : *vide* Craig, pag. 345 ; This was repelled because old Pittarrow was the immediat nearest air : sie Haddington, *penuit* Februar 1612, Rae *contra* Keltie.

reply, (*viz'* Pittarrow's base seafine in 1659). Wheirupon Weymes having applyed for a new hearing, it was most contentiously debate, whither or no ward lands could recognosce in prejudice of a infestment confirmed before the gift, but after the delict and forfaultor of recognition was committed by the undue alienation of the said lands without the superior's consent. Wheirin it was alledged for the E. of Weymes, that the common law, our laws and A&ts of Parl., Craig and all that wryts *de feudis*, the Lords constant tract of practiques and decissions, the univerfall opinion of all lawyers, and the security of the liedges, (which heir ought to be *suprema lex*,) seimes to have setled this, so far above all the rationall limits of a just contradiction, that to heir it now drawen in quæstion strikes us all with amazement, doubting wheir such scepticisme may end, and if this arbitrary latitude of ranfacking principles will leive us any thing fixed or certaine at all ;—That upon the faith of thesse laws all the subje&ts of Scotland have hitherto rested, ever understanding and supposing that a infestment confirmed before the gift was most sufficient in law to secure that infestment against any recognition gifted after the confirmation, tho the grounds of the gift should be prior to the confirmation, else all the ward lands of Scotland should be now found open to recognitions, the interests of the people should be branled and prejudged, and a door opened for drawing all their rights under hazard and quæstion ; that his Majestie, by granting a confirmation, doth consent to the wassell's right, and so can never quarrell the same upon any preceeding recognition, wheirby the property of the lands was returned to his hands, that *confirmatio illius qui dare potuit est donatio* ; that confirmations are the ordinary way for securing rights against the hazard of recognitions ; that Craig, *Tit. Quibus modis feudum ob delicta amittitur*, (pag. 347,) is positive that any ratification, expresse or tacit, as the superior's accepting a resignation and giving charter theirupon, doth purge prior recognitions ; that the Lords have so decided *in foro maxime contradictorio*, as Haddington marks it at the penult of Februar 1612, in the cause of Rae *cont.* Kelly, wheir this defence was sustained against that recognition, infestment confirmed before the date of the donator's gift, which is clearly the present defence, and yet the pershuar's grounds he now insists upon ware then urged and repelled ;

as also, it was found relevant against a proces of recognition pershued by Sir G. Kinnaird in 1665, that the defender is *in damno vitando*, which excuses ignorance of subtilties, but the pershuar is *in lucro captando*,—the defender is founded in the common opinion of the wholle countrie, in unanswerable decisions, and in the uncontroverted authority of the most eminent lawyers, wheiras the pershuar hath no vestige of any authority, grounded only upon neu notions, innovations, and distinctions, which, if they ware sustained, no man could be secure for ane hower of his estate; and that this being *tentus et habitus* for law hitherto, the moft that in any fence or reason can be done, if the Lords will alter ther former course, is to rectifie it for the future, but not to ensnare any who, upon the faith of so many combining grounds, have rested upon confirmations in tymes past. To which it was replyed for the pershuar, That they acknowledged that a confirmation of a base right furnished a good and a sufficient interest to defend against and purge any recognition that could be inferred upon the ground of that infestment so confirmed, so that it could never be used aither as a partiall or a totall ground wheiron a recognition could be craved to be inferred or a gift taken, as also, it would stand invincibly secure against anie recognition that should be incurred after the date of the said confirmation; but that it should sustaine against a recognition founded upon a distinct and seperat ground prior to the said confirmation, because forsooth, the superior had not gifted the same till after the confirmation, is ane assertion so bold and groundles, so frivolous and irrelevant as ever anie that was infisted on, and absolutly contrarie to and inconsistent with his Maj.'s interest, and wheirin their is not the leift shaddow of a prejudice or inconvenience to the security of the people; for can their be anything more consentaneous to the principles and nature of feudall rights, then that wheir *feudum fuit commissum*, and the propertie of the lands was returned back to his Maj. by his vassells fault before the confirmation, that the said property should not passe from his Maj. except by one of thir 3 wayes, ather by consenting to and confirming of the same seafine by which the recognition fell, or by a speciall disposition and gift of the recognition, or 3rd, by a *novo damus*; and that a naked confirmation of a seperat infestment can

in no law or fence be construed a *habilis modus* to denude his Maj. of that right, that nather being *actum* nor intended unles the feiker of the confirmation had exprest his Maj.'s right; and so the King being certiorat of his oun right had willingly disponed the same, that thir defenders by the same rule behoved to say, that his Maj. passing infectment upon a resignation or on a comprysing, should theirby purge and discharge anterior recognitions, seing it's most certain law, that infectments passing by resignation and confirmation are *termini convertibiles* and *æquipollentes* in law, and produce the same feudall effects; and yet its grosse ridiculous and *inauditum* to imagine that his Maj.'s accepting of a resignation purges any anterior recognition, nather is their any who does affirme it; that the King having *jus perfec^ere quæfum* by the illegall alienation made to Pitarro, any confirmation he gave therafter to the E. of Weymes could not prejudge him, because *confirmatio nihil novi juris tribuit*, it's but ane act of course, and the common a&t of his Maj. as a superior, and bearing a salvo and reservation of all right, and so can never import such a consent as to dispone away a right never mentioned nor thought upon; that the 16 Act of Parl. in 1633, mentions no wayes for stopping recognition, but ather the superiors consent to the alienation or a confirmation therof; that it's so wain and foolish a imagination to think that his Maj. is prejudged and denuded by such confirmations, that no solid lawyer ever dreamed of it; so great a paradox is it, that the defenders understand not Craig, who is in the contrare opinion at page 347, in the case ther betwixt Grange Kirkcaldie and Pharnyharst's brother. And as to their strained pratique in 1612, it meits not, because ther the infectment confirmed was made use of as one of the partiall grounds of recognition, in which case the Lords did decide most justly that it should stay the recognition *pro tanto*; but that concernes not our point. As for the security of the liedges, the same is in no hazard, seing we have knownen wayes in law condescended upon as proper to stop the danger of recognitions, *viz*, ather gifts of recognition or a generall *novo damus*, and which are ordinarily used; and no judicious lawyers, in advising securities, ever rested upon confirmations of a seperat right, and wheir it's clamoured that the contrare hath bein hitherto repute law, the same is denied, upon

the grounds we have represented; but *efto* it ware so, such errors and mistakes cannot be the rule for the Lords decissions else they should be very ridiculous oft tymes: w^t many other things contained in the Informations which sie besyde me. The Lords found the said infestment confirmed since Pittarrow's seafine, (which was the ground of the recognition,) tho long before the gift, could not defend against the recognition, but declared, in prejudice and notwithstanding theirof.

All who understood law and the former practise of the bench, ware much affected at this procedor of the Lords; seing them so influenced and bowed from above, to go over a pratique so clear as that in 1612 is, and wheirof the principall decretit was produced, and over so much reason as was adduced from the unsecuring of the liedges. Sir Geo: L[ockhart] violented himselfe much in the affair, he never pleading chearfully agt his oun judgement; when some of the Advocats ware asking him what could be said against so clear a principle as that defence of my Lord Weimes was, he faintly replyed, The other opinion wanted not it's oun cullor. The Lords ran much divided in it, throw my Lord Chancelor's interest in Weymes, who, far and wyde complaines of the unjust measure he hes got from the Lords partiality or timorousnes.

A. fol. 136, No. 349. 25 Junij 1672.—Umquhile Sir Robert Seaton of Windygaul having

made ane excambion with his brother, the Earle of Winton, wheirby, in lieu of his lands, he got a heretale right in my Lord Dumfries his lands; to which soumes, Gairleton, as air, laying claime, compeirance was made for Sir Robert's sisters, who alledged, the said soumes behoved to belong to them who would be his executors in law, because made moveable by Sir Ro^t in his lifetyme, in so far as he required them and charged the debtors with horning, *quo facto animum declaravit*. Against which it was alledged, that the same ought to be repelled, in regard they offered them to prove that it was never his intention to transmit this soume to his executors by the said charge, seing, *efto*, he had got it, he intended, *simul et semel*, to have waired it on land; he was frequently hear[d] fay, his Sisters should never have a penny of his means, yea, they themselves, in their ordinar discourses, boast that good providence has

throwen that in their lap which their Brother never designed for them. That the bond charged on was but a bond of corroboration of a heritable security, and so, as an accessory, *debet sequi naturam principalis*, and not turne moveable but by a requisition, which they cannot shew. Notwithstanding of all which pregnant qualifications of his *propositum et animus*, they found the soume, as moveable, to belong to the Sisters, who ware executors. This was judged hard; only Gairleton had the misfortune to be generally ill-loved, and the ladies found favour with my Lord Chancelor, who is an ennemy to none of that sexe, if they be handsome. Then Gairleton offered to improve the executions of the charge of horning, hoping that it might be found that the messenger had not 2 witnesses with him at the tyme he gave it.

5th Julij 1672. The Earle of Calendar, as heritable shireff of Stirling- A. fol. 147,
shire, pershues the Toune of Stirling for making payment to him of No. 359.
thesse customes, commonly called the Shiref-gloves, as also of a stag
every day of the fair, conforme to his possession, at leist the use and wont
of his authors, the Earles of Mar. Alledged, That no right was produced
to prove the Earle was Shireff, or had right to the particulars acclaimed.
Answered, They had produced his infestment of the Shirefship, which, tho
it was generall and boor not the particulars he sought, yet he offered him
to prove thesse ware immemoriall casualties of that office. Alledged, His
infestment is null, proceeding upon a gift or signator of his Majesty's, the
tyme of his captivity in the Ile of Wight, all which are since revoked
and declared void. Answered, Whatever defect it had that way the same
is purged, being ratified in Parl. in 1662. Replied, *Quod non est, id
nequit ratificari*. Farder alledged, That Stirling is shireff within its selfe,
and so never ouned the shiref of the shire. Answered, The two shirefships
are compatible; the shiref of the shire is the far older of the two, and
was in possession of the emoluments accruing to his office, and now ac-
claimed, before Stirling ware made shirefs within themselves: that the gift
giuen to the Toune was *salvo jure antiquioris*. Alledged, That thesse 30
years bypast the Shireff of the shire hes used no deids of possession of what
he now seiks; that the Toune all that tyme hes bein frie and in possession

of their ounе priviledge of shirefship; and theirfor, the action being posseffory, the defendars are to be maintain'd in their possession and most have the benefit of a posseffory judgement. Answered, Their's no immunity prescryved, except they say 40 years frie. It was likewayes alledged, That the A&ts of Parl. discharges all shirefs from oppressing the liedges in fairs, *vizt*, a&t 60 and 61 *in anno* 1456, a&t 33 in 1469, with many others: *vide* a&t 277, *post medium* in 1597, a&t 125, P[arl.] 1581. *Item*, that it's *res judicata* already betuixt the Toune and this pershuar's authors, in so far as they having bein pershued by the Earle of Mar for thir very customes, they ware after debate affoilzied theirfra. Answered, That *res judicata* being *exceptio impeditiva litis ingressus*, and so in effect a dilator; the same most be instantly verified by production of the said sentence *absolvitor*, else no respe&t ought to be had theirto. *Vide* D. 10 Julij 1623, Crounar of Arran *contra* L. of Skelmurly.

A. fol. 148,
No. 366.

xj Julij 1672. Sir W^m Fleeming, comissar of Glasgow, pershued a declarator against one Zair, his clerk, to heir and sie it found and declared, that by the instructions given to the Comisars in *anno* 1666, the profite of all summonds, sentences, transumpt^s, registrations, confirmations of the feall and signet, and all other such benefit shall be divided thus, tuo part to the Comisars, and the 3^d part to the clerk. The Lords declared conforme to the instru&tions: Which decision hes awakened the Comisars of Ed^r to fly to and get the like; and they imagine it will be 1000 mks. a year in their wayes, because at present their clerk gets more then they get all.

A. fol. 156,
No. 377.

December 1672. In the speciaill declarator pershued by my Lord Lyon, as donator to the singlē and lifrent escheit of the deceift Lord Salton, ag^t the Fewars of Balveny, for making payment to him, as donator forsaid, of sundry summes of money, contained in bonds granted by them to the said Lo. Salton, rebell; compeirance having bein made for Arthur Forbes, it was alledged the saids bonds could not fall under the late Lord Salton's escheit, because this gift and pershuit was only taken by my Lord Lyon to his brother-in-law, the Mr. of Salton's behoof: to the which Mr. of S[alton] the said soumes fought by the donator to be adjudged to him, do

properly belong, and not to the deceift Lord Salton, under whose escheit it's craved they may be declared to have fallen : in sua far as the said Mr. having acquired the right of the lordship of Balveiny from the Lairds of Blackhall and Kinminnity, in whosse persones the same stood ; he, at the same time, did grant a backbond and reversion to the said Blackhall, wherein he declares, all he payed for his said right was alenarly 38,000 lb., and that the same should be redeimable from him upon the repayment of that soume ; and declares, that seing most of the vassells of the lordship ware componing for confirmation of their fews, and for new rights, and from whom considerable soumes of money was expe&t, that he should, for his oun better securitie of payment, do exact diligence to transact with such of the wassells for new securities to be given them, who had not yet transacted, and to perfitt the rights and confirmations of such as had transacted already, and from both should uplift their compositions in part of payment to him of the aforsaid soume of 38,000 lb. of woodset ; and whatever he received upon that accompt, he oblidges himselfe to deduet it from the said soume of 38,000 lb., and imput it in payment theirof, *pro tanto* : To this backband and reversion Arthur Forbes having acquired right, is confident the Mr. is weill neir payed by his intromission with the said soumes payed to him by the wassells for rights ; and hath a compt and reckoning depending against him for that effect ; and which backbond the Master wou'd in a most disingenuous manner altogither evacuat and render ineffectuall, by this method and unhandsome contrivance,—that the Lyon takes a gift of the late Salton's escheat, tho' truely to the Mr's oun behoof, and under that most unjust and unworthie conveyance, should enhanse and absorb the said soumes payable by the wassells for their compositions, (and which ware destinat for his oun payment of the forsaid wodset soume, and most of them so applied, and who hes sole and best right theirto,) under the late Lord Salton's escheit forsooth, that so the Mr. may still have power to clog and affect the saids land and lordship of Balveiny with the forsaid haill soume of 38,000 lb., as tho' none of it ware payed ; suffering, by collusion, the saids soumes to be abstracted and carried away by the donator, tho' the sole benefit of all will returne ultimately to himselfe ; that so his wodset may stand entire, and may therby

engroffe that wholle estate by his moyen and artifices, and dishonest trinquetings, to the utter ruine of the haill creditors of the late Lord Salton. [For the Arguments in this case, *vide* Brown's Suppl., vol. ii. p. 690.]

Fol. 158, l.
10. —Many mo excellent grounds in law ware infisted on, which may be fein in the Informations: But after great heat and many debates and hearings, and much moyen used by the Lyon and the Mr. of Salton, with which they thought to have opprest the poor gentleman, the Lords generoufly, as I think, resenting the insolent incrochment, and pitting the weaker party, they found, after mature deliberation upon all the wryts and testimonies produced, the bonds in question ware partly conditionall and partly for one and the same cause, vizt, for granting confirmations to the fewars of their fews, and that the bonds can have no effect nor belong to this donator till the condition be purified, and the cause performed; and therfor affoilzies the defender from this present proces of declarator, but prejudice always to this donator, upon performance and purifieing of the conditions of the bands, to pershue ane new action of declarator as accords. After which, the pershuars having made their addresse to the Advocat, who was then sick, and came not to the Session, he seimed to be extreemly stumbled at the decision, and boasted, after the Zuyle vacance, he would come to the House and shew the Lords such invincible grounds for his Majesty's interest, (which he said was horridly wounded and misregarded theirby,) that would make the Lords, if not alter, at leist resume and demurre on what they had done. But he was not so good as his word, and came not abroad all that Session; but, to supply his absence, and to do some thing, he wrot a letter to the Lords to reconsider the cause, in regard his opinion was contrare to their Lordships, &c.: and which magisteriall way of dictating to the rest of the Lords, S. G. L[ockhart] he&tors furiously in his Informationes. But, whoverever, the Lords complyed so far with him as to allow them a new heiring: wheirin the pershuars infisted much to make it appear that the counter-oblidgements ware not correspective nor reall, and which is fully represented by us formerly; yet the Lords advised it of new and adhered to their former interloquitor. S. G. L[ockhart] in his last Information on this affair, was very bold and severe against the Advocat, with whom only he hath the vanity serioislie to contend, looking upon him alone

as his equall, tho he thinks him mighty crazed and bruized by his winter's fever: In the end of it he tells the Lords, that *desultoria illa levitas in fixing or altering interlocutors after full deliberation, ware most derogatory to and a prostitution of their honor and maj[esty]*. The Lords would judge thir expressions petulant and reflecting, and censure them in ordinary advocats; but they stand in some aw of him. The pershuars ware so much the more damped, that by their moyen they had flattered themselves a certain victory; and the Lords deportment was so much the more commendable, that they held justice so dear, wheir they had so great tentations to waver. *Vide* the decision *supra*, at the 8 of Dec^r. 1671, Mr. Arthur Gordon *cont.* L. of Drum.

7 Februarij 1673. *Francis Kinloch, John Johnston, and others, contra A. fol. 166, Sir Androw Ramsay, Lord Abbotshall, &c.*—[The Pleadings in this case *in fine*, No. 387. extend from the end of folio 166 to the close of folio 214. The Author, in a marginal note at the beginning, says, “Severall of the passages and arguments insert in this pleading, ware used by Sir John Cunyghame, others of them again, by Mr. Alexander Spotswood. Nota,—The one halfe of this pleading, yea the fourt part of it scarce, as it’s heir, was nather spok nor informed on, but is added for lustre and diversion.”

The following is the arrangement of the pleadings; and the extracts given chiefly contain the facts of the case.

Sir G. M’Keenzie, *Prælocutor in persuite*, fol. 166 to end of fol. 173.

Sir G. Lockhart, *Prolocutor in defence*, fol. 174 to 183, b.

Reply by the Pursuers, . . . fol. 183 to 189.

11th Feby, Duply by Sir G. Lockhart, fol. 189 to 201, b.

12th „ Triply by the Pursuers, fol. 201 to 211.

Quadruply by the Defenders, fol. 211 to 214.

SIR GEORGE MACKENZIE, *Prælocutor in persuite*, having stated the privileges conferred on the Burgh of Edinburgh by several Acts of Parliament, in regard to the election of Magistrates, insisted that it might be found and declared, That the Magistrates ought to be yearly changed, and that no persons of a higher rank than merchant should be capable to exercise the office of a Magistrate; and, consequently, that Sir Androw

Ramfay, Lord Abbotshall, being advanced to be a Senator of the College of Justice, and so of a higher quality and rank than a trafficking merchant, ought to be declared incapable to be elected in all time coming.¹ He then proceeds :—]

Fol. 169, l. 44. Thus have I confirmed the first ground of our present Declarator, vizt. that their ought to be ane annuall change of magistrats in royll borrows, and derived it from the pure streams of reason, policy, authority, civil law, and customes of foraine countries. There only remaines now the last branch of my undertaking, to conduct your Lordships thoughts to a short refle&tion on our ounē municipall statute law and customes ; sure it does not choak nor interfaire with a principle recommended by so much light and pregnancy of reason : No, we shall find a perfitt harmonie betuixt them. Be pleased then to know, that our legislators of this kingdome, adverting that the priviledges given to the Burrows ware invaded and prostitut, not only in Edr but throw the rest of the kingdome, by the ambition and covetousnes of persones who Fol. 169, b. affected superiority and command within brughes to the great hurt and decreasce of trade, (which is the life and being of corporations,) did, from tyme to tyme, by severall laws and acts of parliament, vindicat the same, and provide remeid, by which the promotion of persons to Magistracy within brugh was appointed to be by the free suffrage and election of the people ; and in regard that gave occasion to great contentions, tumults, and confusions, then it was ordered to be by the people's representatives in a senate or councell, and the continuance of the magistrats choicen was to be only for a year ; as particularly by the 29 A&t, Parl. 5, King James the 3^d, anno 1469, it's expressly provided, that na officers or councell be continued in burrows longer then one year ; and by the 80 A&t, Parl. 6, King James 4, anno 1503, it is statute, that all provefts and others having jurisdiction within brugh, shall be changed yearlie. Likeas, the magistrats and councell of Edenbrugh finding the many invasions and incroachments the pride and ambition of some amongs them made upon thesse acts, so that the forsaid bars ware not able to containe them, they,

¹ See a short note of this case (Gosford's Decisions,) in Brown's Supplement, vol. i. p. 682.

by their a&t, dated the 5^t of October 1658, and again, upon necessary grounds, renued on the 28 of September 1660, did ordaine that no Provest should continue longer then 2 years at most at one tyme. In which A&s I find a pretty agriement with what I observed from the Roman law both as to the intervalls of repeiting offices and as to seclusion till compt, for heir they are appointed to be a full yeir out of all office ere they can be choicen and brought in again. Nixt the advancement of the Thesaurer to any other place is discharged, and he is declared incapable till such tyme as the compts of his intromission whille he was tresurer be fitted and approven by the Councell. And now notwithstanding by reason, policy, authority, the common law, by the laws and undoubted customes both of this and all other nations, elections of Magistrats within brughes are annuall, and cannot be continued for any longer tyme, as is clear from all the uncontroverted grounds adduced by me; yet Sir Androw Ramsay Lord Abbotshall, now present Provest of Edinburgh, having *viis et modis* raised himselfe from being youngest bailzie to be immediatly Provest, hath thesse 10 years bygane so practised and influenced the ele&tons, that he hes alwayes procured himselfe to be continued and ele&ted from tyme to tyme to be their Provest, tho within the Toune of Ed' wheir their is no penurie, and are so many able to exerce the said employmēt, and tho his constant election was nottorly contrare to the knownen inclinations both of magistrats, councell, and people, a few only excepted, whom he had assosciated to himselfe in the governement. Yea, Sir Androw, to give the citizens a taſt of what they ware to expect, immediatly after his 2^d year's ele&tion of the 10, off goes the Laws and A&s of Parliament anent annuall changes, off goes the A&s of the Toune Counſell; they are ſolemnly reſchindled, they moſt not ſtand in his way: and after all this, when the burgeſſes of the brugh did rationally expect upon his late promotion to be a Senator of your Lordſhip's bench, he would have relinquished all thoughts of continueing in their Proveſtrie, yet contrare to their hopes, and his oune reiterat profesſions, he obtained himſelfe to be re-ele&ted at Michaelmas laſt, 1672, wheirupon the body and community of this ancient city, the old magifracie, many of the preſent magifracie, tho of his oune inbringing, and the Councell being appre-

Fol. 170.

hensive that his interest, by their silence and acquiescence, might turne so fixed and rooted, that their fundamental priviledge of election might become ane fanfara and empty shew, a complement and, *pro more*, a bare skelet and carcase of a priviledge; and that this exemple might embolden others to attempt the profstitution of their freedom of elections and of all that is knownen to be the Toune's just rights; and considering the forsaide statutes have been made from tyme to tyme by our wise lawgivers, to correct and remeied such tyrannous invasions, and after all sober methods and applications used to the said Sir Androw proved ineffectuall, the Pershuars ware, much against their will, necessitat by this Declarator to implore the benefit of law, and that your Lordships may find their Magistracie ought to be annually changed, since they have found the fact smart of continuations in their heavy experience thesse years past, from which *tanquam ex equo Trojano*, or a fruitfull womb, have plentifully ishued furth that viperous brood of inconveniences we before deciphered. In a fat luxuriant soill that is not every year broke open by the sweating industry of the labouring man, and made *novale*, that is, as it ware, changed from on shape to another in a perpetuall vicissitude, what cropt can be expe&ted but a rank increase of weeds. I hope all will confess that the governement of magistrats within burrows (who are as the fathers of the people,) ought to be tender, calme, and moderat, to the end that every honest neihbour may freely propose and debate what may be for the advantage of the brugh, yet the long continuance of the said Sir Androw's Magistracy rendered him so proud and insupportable, fwelld him to such insolence over the citizens as he could have used no other to his wassalls or slaves, that in his presiding in the Councell, he sometymes most captiously ensnared them, sometymes most tyrannously threatned and abused any of the members that displeased him, or offered calmly to debate, with most scandalous and opprobrious language, and by commanding them silence else he would lay their feet fast; as will appear from his carriage to bailzie David Boid, to deacon Robert Elliot, and to Francis Kinloch and others, (the particulars see in the summonds,) tho it be a clear and undoubted usurpation in any Provest to offer to imprison a citizen without previous triall and order from the Councell; and if that power of threatening and imprison-

ing ware allowed to Provests in such cases, their should be no freedome in votes and debates, none durst speak to him or offer him councell, (in their private discoursings they said he was so proud, so opiniatre of his oune sufficiency and elevation above all them, that he esteimed them all as sots to him, and, for his tyranny and cunning, they compared him to Oliver C[romwell], and that he was the fitteſt to be a Sultan or the Cham of Tartary of any they knew,) or vote and debate against him, honest trading men being unwilling to be incarcerated or laid aside from going about their affairs: and yet this insolent overruling is no more but a naturall fruit and consequent of his continued Magistracie: At his entrie he seemed ſomewhat more zealous for the Toune, and about 8 years ago he made Sir William Tomſone leap out of his place for attempting that *Vide* [page 3,] 20 Fcb. which himſelfe hath ſince too frequenlie practiſed: then the Toune cryed 1665. him up, but it ſeemes he deſigned only theirby to act uncontrolled without a rivall, and would not admit 2 Cæſars in the toun. Let us proceed to the reſt—annual change keeps Magistrats from trinquetting, knowing they will be ſhortly called to ane accoſt: continued Magistrates begin to dream they are exempt from it, and adventure to diſpoſe more arbitrarilie on the common good, and thinks they can ſhun, at leift delay, their counting: By Sir Androw's continued Di&tatorſhip, the poor good Toune hes felt this evill too: ſince his entry to the office the Toune hes had 6 or 700,000 mꝝs. for the ſubje&t of their liberality, Who durſt aſk a compt of this at Sir Androw during his governement? who then can deny the justice, yea neceſſity of a change: when a perſon deſires to continue himſelfe in ane office againſt the inclinations of a people, it gives ground to a very charitable jealouſie of hidden profit, *ægre amittitur quod valde amatur*, and all knows that a great bliſſing hath fallen upon Sir Androw ſince he came to the Proveſtry. See more of this *infra*. A third miſcheiff of con tinued governement we marked, was faſtions, grudges, ſeditious, diſcontents amongs the people. Petronius Arbiter tells us, wheir magistracy Fol. 170, b. is con tinued all conſpire on againſt another, and heir *habemus reum con fitentem*, we can judge him *ex ore proprio*, he accused and impannelled the Toune of a tumultuary convocation. It's true the whole ſtory was of his oune forging, but he wanted the brazen wall, *nil concire ſibi*; he

knew he had given cause and provocations, and wish't the Toune so much good as to have them falling in the *premunire*. I fear it will be needles for me to propose the heroick and eminent exemples of Codrus and the Roman knight Curtius sacrificing themselves for the preservation of their countries, they will not be followed in their gallantrie ; but this I will say, —as the Athenian monarchie found ane end in Codrus, so if Sir Androw will imitat his generous example, and quit his picks and sacrifice his privat interests to the publi&t good of this Toune, their monarchie and his ma-jestie will soon come to ane end, and they will do him the same right the Athenians did to Codrus, he shall be the last king that shall rule them 10 years togither, as having none fit to succeed him in that point. (See this subiect prettily enlarged infra, in fol. 185, l. 44. See Petavius's Accompt of Tymes, pag. 36 ; Heylin, lib. 2 of his Geographie, pag. 190.) The divisions and animosities of Sir Androw's overhaling hes raised are more visible then to be refused, but they have burst out in no illegall eruptions, unles you call this Declarator such, which cannot in any justice be so construed. A fourth bad effect we observed to attend perpetuating in Magistracy, was the filling of all offices and places ather of trust or profit with their oun freinds and relations, and that the Toune groans under this, can convincingly be demonstrat,—their being none preferred within the said brugh to any employments, and keipt in them beyond the tyme allowed, but Sir Androw's oun servants, relations, or flatterers : contrare to the practise of good Nehemiah, chapter 5, verses 14 and 15, he would not so much as eat the bread of the governor, much lesse make his servants bear rule over the people : But this is not all my clients misery yet ;—for albeit the Clerk of the Toun be a person who should only be choicen for his great abilities and knownen affe&tion to the Toun and experience in their affairs, and *ubi industria personæ maxime requiritur* ; yet the said Sir Androw did prevaill with the Toune Councell to employ his oun son to be their clerk, whille he was yet a meer child, and that he nather could serve them, nor could they know what might be his integrity or abilities : in the mean whille Sir Androw lifted the profit annexed.

Fol. 171, b. Notwithstanding of all which reasons, A&s of Parliament, and the
l. 50.

Toune's *editum perpetuum* forlaid, Sir Androw Ramsay continues to exercise the office of Provestrie within the brugh of Edr, albeit he nather be ane actuall traffiquing merchant for many years past, nor be of the rank and degree of merchant, he being advanced by his Majestie's warme favor to the eminent and illustrious dignity of a Senator of the Colledge of Justice, and theirby become of a hyer degree then a merchand.

How can it then with any measure of ingenuity be affirmed, that Sir Fol. 172.
Androw Ramsay can conscientiously discharge the office of Provest of^{1. 25.}
Edinburgh, who is a Senator of the Colledge of Justice, a Member of the
Privy Councell, Exchequer, Plantation of Kirks, and hes 3 opulent for-
tunes to manage, lying in 3 different shires from this of Mid Louthian.⁽¹⁾

He who will not or cannot attend us, most not be our Provest; the Fol. 173.
citizens of old ware so zealous of this, thay ware speaking of depriving^{1. 43.}
Sir William Nisbet from the Provestrie, only for residing sometymes in
the vacance at the Dean, and others have been quarrelled on that singlē
score. And now I hope the plurality, incompatibility, and inconsistency
of the many offices possest by Sir Androw, by which he is opprest and the
places starved, which makes our 3^d reason of declarator, is sufficiently
cleared. [The author here remarks, that their was a fourth and fifth
reason of Declarator added in the summons, but he says] I have made
the fifth a branch and qualification of the forsaid 2^d ground; and it con-
cerned Sir Androw's proud, insolent, and insupportable government over
the citizens, as if they had been his slaves. The fourth reason was a
speciall reason of redution against Sir Androw's election at Michael-
mas 1672, *viz* that he was not lawfull Provest, not being ele&ted by
plurality of voices, in so far as bailzie John Lauder, who was on the
lite with him, had 17 votes, and Sir Androw had only 16; for albeit it

⁽¹⁾ See my compend of Naphtali; and the Scots Greevances under Lauderdale's administration Fol. 172,
complain of the suppression and accumulation of great places of trust and profit in the persons foot of the
of one man. The first names Rothes, and the 2^d that vain empty man, the Earle of Atholl, as margin.
it calls him.

Fol. 173, b. was pretended that bailzie David Boyd's suffrage was to Sir Androw Ramsay, yet the truth is, it was qualified and conditionall in thir termes,— “ If he can be ele&t by the laws and a&ts of Parliament ; ” and he, having confidered the case, and at laft being cleared in his oun mind that he was incapable of theſſe laws, he did clear and purify the condition of his vote the firſt councell day theirafter ; in respect wheirof, the ſaid Sir Androw was not elected by plurality of votes, but John Lauder was lawfull Proveſt. But at the debate they offered not to iſſift on this reaſon, knowing it was both irrelevant and odious, and that they expe&ted not the Lords ſo propitious as to gratify them by annulling that bypaſt ele&tion, roborat with poſſeſſion, and wheirof the halfe of the year was neir expired ; and they ware ſo wiſe as only to iſſift for Declarator to take eſſet in time coming, of the annuall duration of their magiſtrats, and that they be of the rank and quality of a&tuall trafficquing merchands, and conſequently to declare the incapacity of Sir Androw Ramsay’s being heiraſter choicen their Proveſt, as falling under the haill prohibitions above mentioned. But the ſaid fourth reaſon, about the plurality of votes, may eaſily be anſwered ; 1^o, It’s againſt all fence or reaſon to allow the retracting or explaining of votes *ex intervallo*; no election ware ſure at that rate ; 2^{do}, The Canon law has ane excellent expositiōn for ſuch dubious votes, *Vota conditionalia* (ſayes Pope Innocent the Fourth *in capit : 2^{do}, de elec-* *tione et electi potestate in 6^{to} Decretalium*) *alternativa et incerta in elec-* *tionibus vel cauſarum decisionibus reprobantur, pro non adiectis habentur.* *et in pure consentientes recidunt :* which clearly decides the plea in hand.

Hitherto my Lord you have heard what the good Toun craves your justice may declare ; it’s that you may restore this City to its ancient liberty, curb and restraine the ambitious deſignes of thoſſe who have en-devored and ſtill endevor to appropriat the governement of it to themſelues ; animate and revive the ſpirits of the deſerving and drooping citizens, hitherto moſt unjustly debarred from the exercise of what they are moſt capable of ; crush all the latent and ſelfe inriching projects which have been hatched and fomented within their bowells, by their oun ignorance and inadvertence theſſe many years bypaſt ; what they crave is, that their Magiſtrats may be annually changed in all tyme coming, and that

no person heirafter be choicen one of their magistrats, save he who is ane a&tuall traffiquing merchand, of no higher degree and quality then other merchands, and who can and will constantly attend the employment of Provestrie or other magistracy within their brugh ; they crave that the law applyed from your mouth may put ane end to their oppresſion and tyranny from a deceniall dictatorship, which ambition and vanity will not ; their action is a Declarator the most juſt, the most involuntar, and fo moft neceſſar, the moft relevant and beſt founded of any ever was infifted in before your Lordships ; it's the breath and the pulse of the whole City ; we have both merchands and trades for perſhuars, both magistrats, councellers, and people are for it. Why ſhould Sir Androw ſtand alone ? And tho we have called the preſent magistrats as defenders in that, it's but like to a *cognitionis cauſa* ; it's *pro more* only ; it's their intreſt as well as ours to have their birthright priviledges and freedoms fo clearly given us by law declared vindicated cleared, to have it found we are not ſlaves but free borne citizens ; from your Lordships we expe& the extract of this our birth breiff ; and fo I ſhall conclude as I began, If I know any honest inhabitant a reall ennemy to this Declarator, I ſhould iſtantly quite my party and appear for my Lord Abbotſhall.

(Befydes the conculſions of Declarator aforſaid, their was alſo a concluſion of redu&tion and nullity of Sir Androw's laſt ele&tion at Michaelmas 1672, iſert in the ſummonds, viz. that the ſaid Sir Androw's ele&tion was null, as not created by plurality of votes, and that ather bailzie Lauder was ele&ted by plurality of voices, and fo ought to exerce the place and office of Proveſt for this enſueing year ; or elſe that the ſaid Sir Androw being found incapable to have been ele&ted for the reaſons mentioned, the ele&tion is null, and the power is again in the hands of the remanent magistrats and councell. But they paſt from the redu&tion, and ſcarce once mentioned it in the debate, for the cauſes I gave in the other page.)

SIR GEORGE LOCKHART Prolocutor in defence.

To this it was anſwered by the proctors of the Magistrats of Edr^{l. 174,} deſendars in this action, in name and behalfe of themſelves, and the good Toune whom they repreſented ; that the Declarator iſſited on fo great a

transport of popular licence, so high and dangerous ane innovation, as by no præcedent ather in this or any other nation was the like ever attempted, much lesse sustained. This disperat, scandalous, and infamous Declarator ware only pertinent for a John of Leyden, a Knipperdoling, a Mafaniello, a enraged Venner the cooper, and his Fyft-Monarchy men, (see it in Baker's Chronicle *anno* 1660:) nothing but complicated dulnes and unpardonable mistakes of law, and ane extravagant and unparalleled impertinence and blinded malice could ever have brought furth so flegmatick and insipid a Declarator,—the most groundles, foolish, and irrelevant of any that ever had confidence to apply to your Lordships bar since your institution. The yeelding to so mad demands as this Declarator craves, ware to throw us all again unto confusion, rebellion, and anarchie; this shakes the crouns of monarchs, if they durst, they would desire them to be annuall too; this breaks up all societies, dissolves the pins of governement, and threatens to reduce the world to a 2^d Babell, if not to the first Chaos: but whither will not popular licence hurry men? My Lord Chancellor, the scripture tells us God Almighty hath sett bounds to the ocean, and said, Hitherto shall thy proud waves come, and no farder, Job xxxviii. verse 10 and 11. By his perpetuall decree they may weell tosse themselfes, prevail they cannot, roar they may, passe over they shall not, Jeremy v. verse 22. *Loccenius de Jure Maritimo*, pag. 30. Your Lordships will doe weell in imitation of the Divinity, to set limits to this inundation of the wild multitude; if you suffer them once to make this breach in the bastion of magistracie, which they now seek to undermine, they shall overflow all banks, invade and seize on all that ever was knownen to be the just rights of magistracy; you shall not be able to hem in their prosperous insolence, nor will they obey you when you say, Hitherto shall your contradiction against your magistrats come and no furder. (See my Lord Lucas his speach in the House of peers *anno* 1670.) I pray you let us be serious in so important ane affair. I appeal to the experience of all ages, to all who knows the trite maximes of policy, if this be not a certain and confirmed truth, that concessions does never satify or mitigat, but ever heighten, raise, and embolden popular licence; and theirfor your Lordships would refist the first beginnings and appearances of so hy

ane innovation; deny the firt desires of a multitude whille they are yet more modest, by ceding and gratification, youle but ferment their giddy extravagance, and then you most not think to get them refus'd afterwards, for ather theyle extort it, or, at cheapeſt, you cancell and loſſe all the courtesyes and obligations you formerly did them; you may as weell quench a thirfty hydropick as ſatify them; they are never or ſeldome to be found on that fyde wheir reaſon is. Our late troubles in all its pro-
 gressive ſteps is ane ſad but ane undeniablie evidence of the truth of this position. It will be worth our paines to enter into ane inquiry from whence all this dust and extraordinary clamor is raifed againſt my Lord Abbotſhall, and from what commencementſ this ſneaking Declarator has ſprung, and, upon examination, I find the following ingredients theirin, vizt. inconstancy, ingratitude, envy, æmulation, iſolence, wantonneſſe, hatred at vertue, the comon rewards by which all communities have ever been in uſe to remunerat their beſt and worthieſt magistrats, eſpecially if they ware vertuous and of ane eminent reach above their elevation. The 2^d is their pride, vanity, and ambition, by which they are ſpurred inceſantly to graſp at the governement themſelues. And their is a 3^d ſpecialty heir that gave life and being to this infamous perſuit, and that was to compence and palliat their caballings, faſtions, brybings, and other ſeditious and tumultuary pra&tices carried on by thir perſhuars at this laſt election, and wheirupon they are endyted.

Hitherto we have diſcourſed largely of the generall and more remote cauſes productive of this turbulent Declarator of the people againſt their Magistrats, viz. their naturall instability, jealousy, ingratitude to them who deſerves beſt at their hands, envy, vanity, and ambition to rule; their remaines another cauſe which I mentioned having a more immediat and ſpeciall influence in hatching and fomenting this viperous proces, and that was, theirby to palliat the ſeditious and tumultuary pra&tice, [which] malice and ambition had driven thir perſhuars headlong upon in the laſt election at Michaelmas 1672; for having deſigned *per fas aut nefas* to enhance the government of the Toune, in their oune hands, and knowing that vertue and merit ware things ſo difficult, and wheirin they

Fol. 174, b.
See the incomparable Exac Basor-
laſſa, cap. 6,
p. 40.

Fol. 177, b. had no interest, so that they could not expect to compete and rise by such, cajolling of simple tradesmen, as the best and speediest auxiliaries the damned abominable principles of this age affords, and yet oftymes effectually works their point. My Lord Abbotshall's great merit most be cryed doun, most be murthered, for it stands in their way. A protestation is drawen up, before the late election, in most dangerous and seditious termes, tending to amuse and stir up the inhabitants of the Toun as if all their priviledges ware to be utterly subverted and annulled if Sir Androw ware elected Provest, and that innumerable sad and destrutive consequences would follow theiron, and their names would stink with posterity as infamous and perjured; that it would open a door to let in the ruine of all their liberties, which had been maintained by their predecessors with great zeall, faithfulness, and wrestling; that they would break the laws in choising him, &c. Hundred copies of this ware dispersed to poison the people; bribes ware offered for votes, and who refused ware menaced; false charges of horning ware coyned and given the ignorant deacons, discharging them, under the paine of rebellion, to give their vote to Sir Androw. Many false and villainous insinuations they made of his pretended malversation in the Tounes affairs and common good. After he was choicen, maugre all this unwarrantable and factious caballing against him, they will not fist their, but reinforces their fury by their disappointment, and causes one Deacon Elliot give in nixt councell day a frivilous protest against the legality of his election, and had some of the rable of the toun convocat to back it in vast numbers at the councell-house doors in a most seditious and tumultuary manner, and who insolently boasted that they would De Witt Sir Androw if he did not dimit his place, and ware ready to rescue Elliot in caise he had been sent, according to his deserving, by the councell for his faction to the Tolbuith. Of all which disorderly and irregular courses thir pershuars having been the contryvers, authors, and sole abettors, and being procest theirupon by his Majesties speciall command before his Privy Councell, and the fame very prægnantly proven against them, and which lyes before his Majestie to be advised by him; they, from their consciousness of all that guilt have raised this scan-

dalous, infamous, and tumultuary Declarator, to exculpate and palliat their forsaid factious and intollerable desigues and practises.¹

And thus, my Lords, have I traced and derived the pedigree of this Fol. 179, b.
monstrous, unnaturall, and tumultuary Declarator, both from its remoter
l. 46.

and from its more immediate muddy sources. I shall now, with your Lordships favour, proceed to descant upon this desperat, scandalous, and infamous libell it selfe, which belyes not the kind it's come of, but hes all the lineaments that contribut to a similitude between such ane efficient and such ane effect. Their needs no more be said of it to make it's proper qualities be knownen, save what Appelles once wrot at the foot of a portrait, made ridiculously deformed by every ones dash of amendment, —*Hanc populus fecit.* And, to begin with that false insinuation by Fol. 180. which the pershuars proctors ushered in their cause, as if all the City and all its inhabitants ware for this pershuit; the best answier I can make to it is tuo acts I here produce before your Lordships, wheirby the present magistracy and councell, and the deacons of the fundry incorporations of the trads of this place, doe absolutly disclame and disoune this Declarator, as ane innovation endangering all their priviledges; the one is past in the Toune Councell as the only representatives of the brugh, the other is ane Act of the Magdalen Chappell made by the plurality of the deacons;—this is a shreud prognostick of what your Lordships may expect from thir persons, whosse very first representation studies to impose upon you, *ex pede Herculem, ex ungue Leonem.*

. . . A stranger hearing all this bustle and clamor raised by thir Fol. 182, l. 28. pershuars, may be justly struck with admiration what it can mean. The naturall idea and apprehension that will come in their heads at the fieng so much dust raised, is,—sure he most be some monster this man, that provocks them to cry, as the Jews did against Paull, A&s 21, verse 36, Away with him, away with him,—he most have robbed temples,

¹ See the protestations abovementioned, both Elliot's and Francy Kinloch's, and the 12 articles containing the rise and progresse of their tumultuary practises and convocation about the last election; *item*, the state of the probation theirof all besyde me; and sie their most virulent and crafty speach they dispersed abroad, (tho it was not till before the election 1673,) called The Speach without Doors, filled with threatenings if they continue Abbotshall; its worth the reading.

violat virgins, committed sacrilege, done them the hyest disobligations imaginable, been unfaithfull both to God and men ; one would justly expect all this and more behooved to have occasioned such ane hubbub and uproar. Come, I'le be complaisant to thir gentlemen, and I'le examine what are my Lord Abbotshall's escapes, and, after a full deliberation, I find, if he has exceeded, it hath been in zeall for this toune, to which he hath done such services as oblidges them, by all the rules of gratitude, to thank and defend him eternally ; but I have shownen that he who shall act most for their good needs expect to be most loaded and exclamed against for his confortable reward, and I shall only remember you that *causa infirma* is *semper querula*, and most be supplied with railings and calumnies,—wheir the lyon's skin fails, it most be eiked out by the foxe's taill. I shall not offer any panegyrick of my Lord Abbotshall's abilities, integrity, and merit,—it's much easier to detract than praife, man's nature bends more to the on than to the other. Flattery I cannot be guilty of in this particular, being furnish't from so large a storehouse of vertuous actions, that apposit words suitable to expresse the grandeur of the theme may be much sooner wanting then subje&t matter, and many judges it more safe to passe over a noble untainted reputation in silence, then by mean representations sinking below its worth, to fully and wrong it. *Præstat de Carthagine, &c.* And, tho his modesty will blush at the rehearsall, yet I will indulge so much to thir pershuars as to refresh their memories with a few of the many good offices done to them by him whom they now seek to wound in this Declarator.

I shall not run back so far as to his most prudent and moderat governement the tyme of his first Provestry from 1655 till 1658, I shall restric& my selfe to his re-entry theirto in 1662. Your Lordships, then, will be pleased to know that he then found this Toun miserably divided 'twixt 2 strong factions, the Merchands and the Trades ; the combustion was so great it seemed almost inextinguishable : they had, with much bitterness [and] animosity staged one another before the Parliament about mutuall invasions on priviledges, they had drained one another's thesaurie, and all were afraid of the consequences of such alienation in the minds of the neihbours. Sir Androw not only, beyond all expectation, composed their differences,

but also, like a common father to both, hath keipt them in ane æquable ballance and temper ever since. At his entry, the Toune's credit was so low, that creditors looke upon the debts they had in their hands as halfe desperat, and all of them ware redeeming their stocks with the offer of abatement of 6 or 7 years annuel rents ; wheiras he, by his carefull manadgement and oversight, so revived the Toune's credit and reputation, that they are at present reput the best debtors in the kingdome, and are courted on all hands by such as would secure their money. He hath caused pay fyve hundred thousand merks of principall summes since his entry, besyde the pun&tuall payment of annuells. He it is that by his favor and sagacity hes procured their stock and common good to be augmented fyfty thousand merks by year beyond what ever it was formerly. When he entred to that office, he found fourty-fyve thousand merks of arrears of bygane stipends owing to the Ministers of the toune who ware turned of upon the change of the Church governement, and in former tymes they could nevir reach to what compleited their Ministers [stipends], but yeirly their was a confiderable deficiency, for which the Toune behooved to be stmented ; and yet he caused pay that 45,000 merks of arrears, and hes so ordered the Ministers salaries since, that at this day their is not a 6 pence owing to any of them ; albeit the Toune had then the rents of the Bischoprick of Orknay ferm'd at 10 or 11,000 merks *per annum*, as ane additionall help to their payment, and wheirof they now stand deprived. Did not he interfaire with the gentlemen and heritors of the shire of Mid-Lothian in getting the proportion of the excise rightly adjusted, by which means he procured 10,000 merks by year casten upon the shire, and the Toune freed of that inæqual burden under which they ware formerly groaning ? Did he not contend with your Lordships of the bench anent the præcedency and grandeur of the provest of Edinburgh, and did not his zeall in promoting thesse publi&t concernes draw him under the odium and hatred he suffered ? Did not he get 200 £. English money annexed to the office of provestry, payable out of his Majesties Exchequer ? Did he not obtain, in the Convention, a revaluation and alteration of the Taxt roll of the Burrows, which had been attempted by sundry provests before him, but never could be got effectuat by any but by him ?—which proved

so great ane ease to this City of their old proportion, that in the taxation imposed in the last session of Parliament, in 1672, it will be 300 £. ster-ling of ease effectiely, the same being translated and parcelled to Glasgow and fundrie other burrows, who, considering their present wealth and trade, ware undervalued ; they, sure, would owe him no kindnes for this action ;—and all this befalls him in wrestling for their sakes. Did he not, in imitation of the City of London, procure Edinburgh declared free of all locall quarterings of sojors ? Whow many particulars are their, in which, beyond all rationall contradiction, or a peradventure, this Toune would have suffered, both in its honor, profit, and priviledges, had not his vigilant and prudent eye wairded the blow ? And is this all the reward they would give him for so many honorable and laborious services he has done them :—sure this surfeit comes from overmuch plenty, and from ane insensible happines (as I derived it before.) What are they who are his pershuars ? Are they not men whom he himselfe hath raised and præferred to the Magistracy, and other places of trust, even from contempt and obscurity ? And in this I shall confesse he erred, and seemes, in a just retribution, to be recompenced by this viperean brood ; but may he not retort on them, as he in the comedy does,—*Licet ego dignus essem contumelia, tu indignus qui ut facias tamen* : Plautus.¹ But he has a more generous principle actuating him, vizt, that *Bona facere et mala pati regium est*. What are thir pershuars and their adherents ? Doe not sundry of them stand openly convict of bribery and other vile and disingenuous practises, and the common good of the good toune was to have payed for all, as is clear from the depositions of sundry famous witnessses ; a clear and palpable demonstration that thir men intended nothing but to convert and prostitute the governement to their oun private ends and advantages.

Fol. 183.

Since, then, this desperat Declarator is but ane a&t of popular licence and sedition, is scandalous and of so bad exemple, tending to the contempt of all magistracy, I hope your Lordships will not encouradge it, seing the governement of this brugh is of a publi&t concernement to his Majef-

Fol. 183,
l. 23.

¹ [There is no such passage, nor any similar one, in PLAUTUS. It is probably from TERENCE. Eun. V. ii., v. 26. *Etsi ego digna hac contumelia sum maxime at tu indignus qui faceres tamen.*]

ties intereft, and wherein he is represented, then if any invasion be made on the people's priviledges in the exercise of the governement, complaint ought to be made to his Majestie theirof, who may take inquisition theirin, and, as he finds cause, punish the offenders; otherwayes the magistracy of brughs shall be laid open to contempt of private factious persons, which, in reason of state, ought to be obviat, leift a door be opened to licentious persons to quarrell thesse who are in publick places and authority, as hes been unanswerably demonstrat already. We agree the liberties of the good toun be inviolably preserved, but it's manifest what is now sought is ane totall subversion theirof. In respect of all which, the pershuars having no intreft, the defenders ought to be affoilized from this scandalous, groundles, and infamous Declarator.

Remember, my Lords, what fatall and dangerous effects changes have ^{Fol. 183,} produced, and that it's now in your power to prevent them by preserving ^{l. 55.} the true and ancient liberties of this brugh, wheirof all sober and vertuous persones, minding the publi&t good, will alwayes remaine the zealous maintainers and assertors. But, in pity to humane frailty, doe ^{Fol. 183, b.} not feed thir men's melancoly with chimericall priviledges, with hopes postilion to the sun, fancyng things beyond the moon, and bringing great booties from East to West upon the wings of their crack't imaginations; fill not their bellies with the east wind (as the prophet speaks,) with the hopes of an alchymist with thine empty smoak, with a declarator of a fancy. You know who pronounced *fumi venditor fumo pereat*; (it was the Emperor Severus against Vetricius Turinus.) See *Ærodius Pandect: in vetere editione Titulo de extraordinarijs criminibus, cap. 37.*

To all this it was REPLIED by the pershuars proctors above mentioned, in manner following:—

MY LORD CHANCELLOR. You have heard my clients rudely hectored, suitable to the genius of the party they have to deal with, by his advocats, but they, with all sobriety, apply to your Lordships for assistance. We have, indeed, said, We will not have my Lord Abbotshall to reigne over us,—but we humbly conceive their's no faction or sedition in our reslove. . . . We know him, without flattery, to be of parts and integrity beyond most of the number of the citizens, and worthy of all the honor

put upon him, but, as Livy has it of Manlius, he is *vir (nisi in libera civitate natus) incomparabilis.*

Fol. 184, b.
l. 11. And really he [Sir Androw] ought to be the principall craver of this just Declarator, espeially seing their are few or none within this city but all are for it, both Magistrats, Councillors, and people; and wheiras we ware in ane insolent manner represented as the dregs and lees of the Toune,—that pittifull mistake of our condition is to be pittied,—and may with sobernes eneugh be called a ly; for we have ane old Provest on our syde, (Sir John Smith being the only old Provest alive in the city, except Sir James Stuart who was declared uncapable,) we have 20 Bailzies, 50 Deacons, all the people who bear the burden, and also 2 of the present Bailzies, so we are nather the offcourings, nor altogether destitute and discountenanced by the authority of the present establisched Magistracy. We crave no innovation, but only beg of your Lordships the preservation of the liberties the bounty of our Princes have given us. Having tempered our Declarator so that it might only regulat *tractum temporis futuri*, we did not expe&t the leist opposition to it. And it struck us with astonishment and admiration to find my Lord Abbotshall, by his presence, so far concerne himselfe, as to contradict so just and moderat demands. If we had taken him by surprize and at unawars, someting might be said against our method, but we gave him fair advertisement and great elogies, and never provest might have parted with more love and affe&tion had he griped at the criticall hower, and he might have been longed after again. Then the great part, both in the Council and the Toune, ware his freinds, but discovering his positive designe of continuing and perpetuating himselfe in office, it awakened their more serious meditations, and his wilfull despising of all softer and pleasanter methods forced them upon this severer way to reclame him; for he is so bold, he takes councell of none of whom he ought, but relies absolutly to his oune judgement.

Fol. 188, b.
l. 65. And whille Sir Androw seemed to lend his ear to ane accommodation was their not ane Act drawen up by Sir George Lockhart and myselfe, (Sir John Cunynghame?) in substance the very same with our present

Declarator, and empowering every burgesse to look to the preservation of it, and pershue the breach, and making the transgressors punishable as Fol. 189.
infamous, perjured, &c. But Sir Androw was serious about some other thing, he put it up in his pocket and we never saw it since.

It cannot be denied but the pershuars have ane interest in the liberties and priviledges of this brugh, and if so, then they most advert (if they will be faithfull) to the obseruance theirof, and make use of such innocent remedies as to pershue a declarator theirof before your Lordships, as the only Judges competent. As the priviledge and interest belongs to them, so does the application; ther is *in omnibus par ratio*. Seing, theirfor, by not sustaining our interest the interest of this brugh will, by consequence, goe to ruine, and that they are ill founded in law who would stave all off by such a dilator, your Lordships ought to repell it in respect of the Reply, and find that every man who hath a burges ticket hath sufficient interest to pershue this just and relevant declarator. But we are nowayes straitned in respect of them who insist in it; for we have the concourse of the haill old Magistracy, of 2 of the present Bailzie,¹ (John Hall and Robert Leirmont,) of the body of the toune craving to have their priviledges cleared in respect of the differences occurred at the last election. And we know *ex L. 176, D. de Regulis juris, non est singulis concedendum quod per magistratum et judicem publice fieri potest ne occasio sit majoris tumultus faciendi vel dissensionis.*

To this it was DUPLIED by the defenders proctors (*viz*, S. G. Lockhart) ^{11 Februarij,}
thus:—My Lord Chancellor,—Yesterday we heard a great many fancies <sup>1673, partibus
ut supra.</sup> about the point of interest, but so wild and louse when I gript them they vanish't, when I thought I had them fast: at the opening of my hand it was gone *in fumo*, like the hopes of ane alchymist, &c.

I shall only point at 2 things to your Lordships: 1^o, Will not this ^{Fol. 195, l. 1.} frivolous pretence of being insolent and intolerable and of difficult acces,

¹ Sir G. Lockhart called the dividing of the Magistrats in this juncto a schisme, a pope, and antipope. The truth is they never joyned with the pershuars but aimed at a neutrality.

ather in converse or in drawing them to ane accownt of their actings, militat much more stronglie against all other offices and places of judicator in the kingdome? Doe not offices, ather heretale or given *ad vitam*, lay much more exposed and obnoxious to this exception then the prouestrie, which the Towne gets in their reverence once a year?—sure they are 20 stages more liable. Then advert what thir men dryves at, and what are the importances and consequences of relaxing people, tho never so little, from the reins of subje^ction and governement; their nixt attempt will be to slip of the yoke and break all bonds asunder. But, 2^{do}, the argument *in hypothesi* is both false and calumnious, it being nottor. that the prouest nather collects nor keeps, nor ever had meddling with, the Toune's cash, but hath the naked office of supervisинг whow it's expended, as will appear from the perusal of the Thresurer's comptes; and if their ware any thing in that, (as their is not the least farthing,) he is knowen to be a person both easilly conveinable and responsall for any thing they can charge him with, and I, as his champion, do now, at his desire and in his name, throw doun the gantlet for the 3^d tyme, and challanges and defies them all (under the paine and certification of being repute knaves, schellams, and willains, poisoners and abusers of the silly people, if they accept it not,) heir to tell, declare, and produce what they could charge him with of malversation or extravagancy, if he ware out of office. And if they persist in thesse wretched and shameles cheats, and grosse unpalliable leafings, wheirby to amuse the credulity of the populace after so pate a discovery, with such brazen brows, will be indeed a palpable affront both to the understanding and ingenuity of mankind. But in this the defender will solace himselfe, that it will nullify their credit with all confidering men, and to their brazen brow hee 'l oppose a brazen wall of innocent integrity. And as for the falsities they amasse to stain his deportment as unbecoming a magistrat, I could not have supposed it possible that mankind could have emproued to such a height of confidence, or that any in that shape could fall so desperately from all fence of conscience and modesty as to propagat such lyes. And heir again he appealls them all, (and in this he hes persones beyond all exception for his contestes and compurgators, *viz*, the severall members of the Toune Coun-

cell,) if ever, during the wholle tyme of his bearing office, he used any opprobrious, misbecoming, or ungentlemanny language, to the magistrats or meanest of the Councell.

Who can rationally suppose it [the A&t 1609] was ever intended to se-<sup>Fol. 197, l.
3c.</sup> clude, incapacitat, or debar a borne citizen who served his apprenticeship, and was bred a merchand, and used trading of a long tyme, and, having a competency, quites it,—*eſlo*, such a man, by his oune merit and his Majesties favor, should be supveniently exalted to a hyer degree or dignity. . . .

This pretence of my Lord Abbotshall's not being ane actuall trader,<sup>Fol. 198, b.
l. 7.</sup> can no more be obtruded against him at this day than it might have been theſſe 20 yeirs bygaine.

But 3^{to}. that which settſ it beyond all limits of rationall contradiction<sup>Fol. 200, b.
l. 22.</sup> is, that perſones of a hyer degree than merchands, yea Senators of the Colledge of Justice, and Officers of State, have been elected to, and exercized the office of Proveſtrie within this city, both of old and of late tymes, both before and ſince their great Decreet Arbitrall; ſo that cuſtome, that infallible interpreter of laws, affirmeſ their is no repugnancy, inconſistency, or incompatibility, (as is foolishly dreamed,) betuen theſſe diſſerent offiſces; it heſ ſhowen us the poſſibility of enjoying both, by giving us many iſtances of one perſon acutally excerciſing both places at one tyme: And not to run far back, we have anno 1558, and again 1561, Mr. Thomas M'cailzean of Cliftonhall, ane advocat and Tounes aſſeffor, and afterwards a Senator of the Colledge of Justice, Proveſt of Edinburgh; and in the 1 A&t Parl. 1563 this M'kailzean is commiſſioner for Ed^r; and in 1557, when the Lord Seton, Proveſt of Ed^r was ſent to France, the councell choiced Sir Richard Maitland of Lethington, a Lord of the Seſſion, for their Proveſt in his abſence; then in 1570, Mr. James M'Gill of Rankeillor, Clerk of Register, and a Lord of Seſſion, is choicen Proveſt of Ed^r; then before all theſſe we have 3 of the perſones contained in the firſt ereſtion and iſtitution of the Colledge of Justice, viz. Mr. Adam Otterburne, Mr. Francis Bothwell, and Mr. James Lawſon, who ware all elected, and did officiat in the capacity of Proveſts of Ed^r; we have alſo Sir William Hamilton of Sanquhair-Hamilton, a Lord of Seſſion and Proveſt of Ed^r, as he is deſigned in the Lords books of

federunt anno 1554, and theirabouts, and particularly on the 12 of July 1554: We heard already how Alex' Lord Fyvie was Provest from 1598, to 1608, and yet all that tyme a Lord of the Seffion; then succeeded to him Sir John Arnot in the Provestry, who was Thesurer depute; all which appears from the records and books of the Toune Councell of Edinburgh, (see a little extra&t from them *apud* me;) and in the memory of many yet on life, was not Sir John Hay, in 1636, both Clerk Register and a Lord of the Seffion, and Provest of Edinburgh, which dispells that incomprehensible notion of incompatibilitie betuen the two offices.

Fol. 201, ult. And thus having dissipat the grounds of this desperat Declarator in all its parts and consequents, allow me to depositat with you, for a whille, the duty of a barrister, and speak a little by way of advice and information to your Lordships capacity, as if I ware of your number. . . . Encouradge not the canaille; if you doe, rest assured, they'll not stop heir. What if a Declarator should be raised against you, as the subverters of the laws of the kingdome; we shewed it might be both more palliably and plausibly done than this infamous Declarator you are now made judges of. Vindicat yourselfes and your posterity, and doe not prostitute the innocent representatives of his Majestie to the humors of the brutish and irregular multitude, leist the bastions being brok doune, the inundation of a popular fury unmercifully overflow us all. *Melius est,* (says the Emperor Justinian in that excellent Lex. 5: *In quibus causis in integrum restitutio necessario non est:*) *in tempore occurrere juraque intacta servari quam post causam vulneratam remedia querere.*

^{12 Februarij} To all which it was TRIPLIED by the pershuars pro&tors that the ^{1673. Parti-} Emperors Walentinian and Valens, in Lege 6, Cod. *De postulando:* ^{bus ut supra.} discharge Advocats *ut non ultra quam litium poscit utilitas in licentiam conviciandi et maledicendi temeritatem prorumpant;* it's true some freedomes most be allowed in certain cases, both for heightening the vivacity of debate, and for opening up the merits of the cause, which sometymes cannot be faithfully done without some reflection. But it strikes me with astonishment to see what deall of ridiculous discomposed rage is made by thir defenders out of nothing. If my clients had been traitors to their prince and country, murderers of their neareſt relations, &c., they could

not be more brisquely assaulted, nor could mo caveats be given to beware of them.

I shall not repeit one syllable of what we urged by our reply, in fortification of our interest to purshue this just and necessar Declarator; I shall only remove what is pretended (against what we pressed) by the defenders in their duply, viz. that the only rationall remedy knownen in law for repressing the debording of magistrats, is by immediat application to his Majestie, and by ane inquisition to be taken by his ministers of state *in judicio syndicatus*, then which their cannot be a more groundles extravagancie. But I will infist no more upon this, since the defendant's oun pro&tors despair of it, and have past from it in so far as they have proponed peremptor defences against the relevancy of our Declarator and entred to debate *in causa*.

TRIPLY.—This Toune of Edinburgh had Acts against Magistrats perpetuating themselves or continueing longer then two years, so have Haddington, Dundee, Glasgow, and many other burrows, so that all the arguments for this defender are answered and decided by the burrow law and practise. The good toun of Edinburgh longed to have this priviledge again wheirof they had been robbed; they desired, at this last election, to have their 2 year Act revived, and the sanc&tion to be sacred and upon oath; but Sir Androw took it to a long advisement, yea, I'le say more, all their laws and acts ware in vigor and observance till he invaded and cancelled them.

And I most farder take leive to informe your Lordships, that the rife, designe, and project of the Decreet Arbitrall, was more levelled to seclude you and the other members of the Colledge of Justice then any other persones within the kingdome; for the true occasion and originall of the said Sett was, that their being ane ancient custome of the Toune Councell of Ed', to have alwayes three able lawyers their assessoris, with whom they advised in their affairs, and thesse lawyers being men usually of great parts and abilities, they did by litle and litle creep in and insinuat themselves unto a share of the governement of the brugh, even to that lenth, that they came to fit with them in their councell, and vote in their leittings and elections, and in all other affairs of the brugh; and being able

men, procured themselfes sometymes to be choyfen Provefts, and of this kind ware Mr. Ja. M'Gill of Rankeillor, and Mr. Thomas M'caullay of Clifton hall, who ware at firſt the Tounes affeffors only ; and which abuse in the governement being considered by the neihbours of the Toun, and especially the trades, (for the affeffors oft fyded with the merchands and magistrats against them,) gave the arife to the Submiffion and Decreet following theiron ; for at the election 1582, the three lawyers affeffors coming to councell to vote at the ele&ion, they ware violently debarred by ſome craftſmen out of the councell houſe, and after that never more had vote, for much tumult and uproar was about it ; and the flame ſtill increaſeing betuen merchands and trade, that wife and politique prince, our peaceable James, forced them to compromit all their diſferences to ſo many gentle‐men adjacent heritors to the Toune on ather syde and himſelfe umpire and overſman, and who, after very much paynes and travell in it, gave furth his Decreet Arbitrall and award as we all know. Now this deſigne of ex‐cluding for ever the members of the Colledge of Justice from having any ſhare in the governement of the city, burſts furth and appears in the very firſt article of the ſaid Decreet, (as being the chieff thing theirby intended,) viz. That the Magistrats heiraſter ſhall be wholly choicen furth of the calling and estate of merchands, conforme to the 26 A&t of Parliament in 1535.

Fol. 208.

Fol. 210, b.
l. 51.

Fol. 211.

We know by experience whow easie ane matter it is to Sir A. Ramsay to pick out a number of 12 perſones at the election (which conſifts indeed of 38 perſones, yet 10 perſones of the trades make the ele&ion ; for that number being the major part of the chappell, the reſt, if they wold be unanimous as they uſe to be, follow the plurality, ſo theirby he gains 18 votes) of his oune confidants and choice ; especially, ſeeing theſſe 14 years bygane (joyning his 2 reigues togither) he hes been Proveft, and experimentally knows the way whou to pack it, and particular condeſcendance can be made already upon the persons he deſignes to be Deacons the nixt election. And, theirfor, if your Lordships doe not clearly de‐cerne what ſhall be the duty and deportment of the electors, in relation to the contents both of the A&ts of Parliament, Secret Councell, and the Sett, bounding the duration of Magistrats to a year, and their quality to

merchandizing, the poor good Toune, shall not only run the hazard to losse their priviledges, but also shall remain in the mist, and be forced to a^t over again their former protestations against Sir Androw's liting and electing, wheirupon will follow only false reports of imaginary tumults, and other misrepresentations, (as he did already,) and renewing their Declarator.—And now, My Lords, I fear I have forgot Greg. Nazianzen's rule to orators, *stimula equum ad metam* (see *Vossij Rheticam Contractam, libro 2 cap. 15 in fine pag. 149;*) whoverer, this confidence solaces me, that your Lordships are fully convinced and persuaded of the justice and necessity of our Declarator, in all its parts, notwithstanding of any thing hes been offered by this defender in the contrare; who, if he ware truly our Provest, would assist us in the demand, and against whom we have no more designe in this pershuit, than against you, my Lord Chancellor, or your Lordships of the bench, and all the nobility and gentry of Scotland In respect of all which, it is hoped your Lordships will declare their important priviledges to them; and if thir just indevors for removing him shall faill, it will be in vain to think that any thing else can stop his arbitrarie carreer of being perpetuall Di^ttator over this brugh; and who will, by enraged insolence, returne with 7 devills worse then the former, so that all the just interest of this brugh, and all the other regall burrows of Scotland, shall be sacrificed to the ambitious designes of one man: wheiras, thir pershuars debate nothing against Sir Androw, wheirin they are not content to share with him, being all weell satifified, to be perpetually debarred as weell as he, from any sort of usurpation over their Mother, the city of our solemnities, the metropolis of our Kingdome, and the *communis patria* of our law; and so being returned to the same point and words at which I began this famed debate before your Lordships, this, but much more the idea and apprehension of sorrow that I forsee will posseffe this miserable place, if you turne your backs upon them, commands me to stope, and choaks my expression, that I can proceed no furder.¹

¹ See ane excellent and pathetick description of the desolation and confusion of a Toune taken by storme, out of Fabius Quintilianus in *Gerardus Vossius his Rhetorica Contracta, libro 4. cap. 16. pag. 356.*

Wheirunto it was QUADRUPLED for the defenders, in so far as concerned the point of interest, and DUPLYED as to the several grounds of the Declarator it selfe.—

Fol. 212. My LORD CHANCELLOR, The debate hes run to such a length, beyond expectation, that for me to be tedious, might be so far from being of advantage to my cause, that it might rather prejudicat it; first, with your Lordships, whose patience we have too much abused and encroached upon alreadie, and nixt, with the degust of the other subiects who plead a share and concernement in your tyme, for tabling and discussing their interests, as weell as we.

They tell us, again, that he [Sir Andrew] hes designed to perpetuat himselfe in the right and office of Provest, and hes a packed Councell that is for him, than which their cannot be a more unjust and unwarrantable calumny ; but tho he had designed it, it ware not in his power to accomplish it, so long as the freedome of annuall elections is reserved in favors of the brugh ; and I can confidently declare to your Lordships, and will get a great many of the best citizens, both trades and merchands, to attest it, as being a great truth, and consisting in their knowledge, that their was never a Provest that used leſſe endevors of that kind then the Lord Abotshall, and who never used any other methods for attaining to or continuing Provest of Edr, but the fence of his faithfull endevors, and great signal services for the interest of the said brugh, and did leive the same intirely to the suffrage and opinion of the electors ; wheiras the pershuars of this scandalous and irregular Declarator did leive no means unattempted, by caballing, detraction, menacing, brybery, and other indire& courses and trinketing, to have diverted the late election of the Lord Abotshall as Provest, but which they ware not able to doe : so great and confirmed experience had the Toune reason to have of the Lord Abotshall's fitnes and abilities for the faid office, and of his zeall and endevors for the interest and good of the brugh.

Fol. 214. And now, My Lords, I am arrived at ane end of overturning this
I. 53. ruinous Declarator, which is ane absolut and dangerous innovation of all the true liberties of this brugh, and threatens the dissolution and subversion of its priviledges, it impinges upon the Decreet Arbitrall, the funda-

mentall constitution of the governement of the Toune,—it reflects upon the laudable customes and practise of all the honest and intelligent citizens of this brugh thesse 100 years past,—it dryves men upon perjury, and unjustly encroaches upon their fredome and liberty to elect the worthiest,—it's a boutade of popular licence in ane bizarre multitude against their best governors. And, upon the wholle matter, this scandalous, infamous, and desperat Declarator, albeit it hes occasioned much noise and clamor, yet, Fol. 214, b. upon a serious consideration theirof, their is not the leist cullor or prætext for granting of it, but it resolves in ane absolut innovation of the governement of this brugh, and an unparallelled incroachment and insolent invasion of the rights and priviledges both of magistracy and the brugh,—is fomented and carried on upon private mistake and malicious resentments, and hes a most malignant aspect and tendency as to all other publict administrations. And, tho the Lord Abbotshall does neither value nor arrogat to himselfe upon the accompt of the great services he hes done for the interest of this ungrate City, yet it cannot be denied, without the height of base unthankfulnes, but he hes been very zealous for all the concerne- ments of the same, and hes been most instrumentall, by his endevors, to obtain in their favours grants and concessions which concerned nearly both their honor and interest, and which thir purshuars themselves ware forced to acknowledge in the debate; and theirfor it's hoped that your Lordships will in justice vindicate, prote&t, and secure the honor, interest, and reputation of the present magistracy, against contempt and disdain of a rabble, and give such a determination in prudence, both as to the finding the pershuars to have no interest, and as to the merits and injustice of this most unwarrantable and dangerous Declarator, as will maintain the peace and quiet of this brugh in time coming, and prevent the direfull and fatall effects and inconveniences that such ane dangerous unheard of innovation does threaten to his Majesties interest and to the stability of our governement.

The error of this Pleiding lyes in its fulnes and exuberancie ; however, Fol. 214, b.
upon examination, any repetitions that are in it will be found ather wheir
the argument of the contraire party is resumed in order to be answere^{l. 24.}d,

which is the forme in disputing ; or when they are in quite other termes summarlie recapitulat in the end of the answer, reply, duply, triply, &c., by ane *Anacephaleiosis* for the better enforcement upon, and moving, and refreshing of the Judges memories ; and in some places of it, brevity is so far consulted, that reference is made from one part to another. Tho in a narrow scrutiny, their is no doubt but this (as weell as most other wrytings) could admit of large defalcations.

As for Sir George Lockhart's part in this tragicomædy, he a&ted it to the admiration of all hearers, with so much lustre and advantadge, that tho in other things he surpassed all his rivalls, yet in this he excelled, outdid, and surpassed him selfe ; his pungent arguments ware carried in such a torrent and irresistible flood of eloquence, the most impetuous and charming of any thing ever I did hear, he did so chain, and with his tongue draw us all after him by the ears, in a pleasant gaping amazement and constraint, that the wonderfull effects of Orpheus' harp in moving the stones, seemes not impossible to ane orator on the stupidest spirit ; and what *Seneca pater, libro 3º Contraversiarum, in proemio*, fayes of Caius Severus, that eloquent pleider, I found verified in my selfe and others, *Timebamus ne defineret : (vide Vossij Rheticam Contractam, libro 2, cap. 15, in fine pag. 149 :)* they ware so far from wearieing, that they ware affraid of nothing more then that he should end too soon.

The Lords sequestrated the 15 of Februar 1673, to advise this action and the debate, and, after they had spent neir the wholle forenoon in reading the Informations of both sydes, which course they took heer, and in reasoning with some deall of heat, the result was, that my Lord Chancellor and the President should call the parties concerned and essay ane agreement : which they having done, some of both sydes condescended verballie to submit the difference to my Lord Chancellor's determination ; tho the plurality of the Lords was clear to have astoilzied the Defenders from this groundless Declarator. However, the Chancellor ordained, by way of arbitration, the wholle proces, summonds, executions, acts, minuts, &c. to be utterly extin&t, supprest, tane of the fyle, and given up to my Lord Provest Abotshall, (which was done acordinglie,) and, in place theirof, decerned ane A&t to be past in the Councell of Edinburgh

that no Proveft, Dean of Gild, or Thesaurer, shall in tyme coming continue above two years at moft ; and this to be tane under ane oath and other certifications : At which, ſome members of the Toune Councell being unclear, (ſee nine pertinent reaſons againſt that two years a&t *alibi apud me*; *item*, Samuel Cheiflie's protest againſt it;) on the 28 of Februuar, being the laſt day of the Seſſion, their was a Decree of the Lords made, approviing of the ſaid two years a&t, and interpoſing their authority to it ; and ſo all thir perſhuars pains, expence, and clamor, ended in that which Abotſhall had offered them before. The Toun heſ had few quiet dayes for ſome tyme ſince, but *hi motus animorum atque hæc, &c.*—

Whow affairs went in the Toune after this Proceſs, ſee ane accoſt of, *alibi*, beſyde me.

Summer Seſſion. June 1673.—The Commiſſioners to the Parliament A. fol. 215,
for West Lothian, *alias* Lithgow-shire, (it was Sir Walter Seton, and No. 388.
James Dundas of Morton,) having charged the heritors holding of his Maſteſty liable to them (and who are but very few, their not exceeding 6 or 7,) for payment of the charges and expences payable to them for their ſervice and attendance at the laſt ſeffion of Parliament in 1672, conforme to the A&ts of Palliament; the ſaid heritors ware reſolving to ſuſpend upon thir grounds, That albeit it might be pretended (and that not without ſome shadow of reaſon and probability) in this ſhire, and theſſe others who came but over their doors to hold the Parliament, that they ought to have no allowance at all, ſeing that moft be ſuppoſed to be given upon the accoſt of the trouble and more than ordinar expence they ware at, in being abſent from their oune homes, and to hold out a rank with, for the grandeur of the kingdome, and the honor of that part which they repreſented; and in compensation of the damage and loſſe they ſuſtained in their affairs, by reaſon of the ſaid neceſſar abſtra&tion and diuerſion, which thir Commiſſioners could not pretend to, ſeing they might both attend, and be few nights out of their oune houses; —yet they would not controvert that with them, onlie they ware weill founded upon the A&ts of Parliament, to ſie no more than what was juſtly due ather craved or exaſted; and theirfor the ſaid charge behoved to be

suspended till the Commissioners, in the termes of the 35 A& in 1661, shall produce to them a testificat under the Clerk of Register's hand, attesting the tyme and dayes of the Parliament: for, 1^o, Thesse dayes wheirin the Parliament did not sit, their can be nothing payed for them. 2^o, If it shall appear any of the Commissioners ware absent any of thesse session dayes, their's no reason they should have any thing allowed them for that tyme. 3^o, Wheir the said A& of Parliament seimes to allow them something to carry their charge in going home or coming back, their is no neid of it heir, seing they can ather goe to Ed^r from their severall interests, or returne, in 2 howers tyme, which deserves no consideration; and yet the 18 A& in 1641, allows the Comissioners of the shirefdom of Ed^r, for their coming and going, one dayes pay, which is 5 lb.; but that A& is reschinded, except in so far as is revived by the A& in 1661, which passes over that part of the A& 1641, and fundrie other clauses of it, in silence. As for that point, whither or no they should get allowance for each individuall day, from the fitting doun of the Parliament to its rising, without adverting to its session or no session,—and if as to this effect the tyme of the Parliament most be computed to be *tempus continuum* (as is done to the Kings Commisioner,) or onlie *utile*, seimes somewhat dubious; for tho it would appear hugdely reasonable, that it should only be understood of fitting dayes; yet the same reason would di&tat, especially in behalfe of thosse who comes from some distance, that their trouble, their charge, and losse of their privat busines, is the same, as weill the not fitting dayes as the fitting, seing they cannot retire during the inter-vall to their oun homes, and which being occasioned for their shire and constituents interests, their maintenance ought to be upon their score, seing *officium nemini debet esse damnosum*.

My Lord Lauderdale was so huff'd at this session of Parliament in 1673, that they say he discharged the Register to give out any letters of horning to the Commissioners that served at that Parliament, for their fees, and let them that pleased pershue it by way of action.

Fol. 216, b.
No. 393. About the same tyme, in June 1673, I heard of a proces some Barons and Gentlemen had intended against my Lord Lyon, to hear and sie it

found and declared, that he had done wrong in refusing to give them furth their coat of armes with supporters, wheirof they and their predecessors had bein in posseffion past all memory, and never quarrelled till now ; and theirfor that he might be decerned to immatriculate them so in his Register, and give them furth ane extract conforme, as is provided by the late A& of Parliament in 1672. The Lyon's reaſon is, becaufe, by ane exprefſe letter of his Maſteſty's, none under the digniſty of a Lord muſt uſe ſupporters.¹ But the gentlemen anſwer, that Lords in the beginning having bein only Barons, and in regard of the conſiderable iñtereſt they had in their reſpective ſhires, being commiſſionat from the ſmall barrons and freeholders to repreſent them in Parliament, they, becaufe of that credit, got firſt the denomi nation of Lords without any patent or creation, and, upon the matter, ware nothing but Barons ; and ſo, what is due to them, is alſo due to the other, they originaſly not diſſerſing from the reſt by anie eſſentiall or ſuperior ſtep of digniſty : So Craig, page 78 and 79. Replied,—Whatev'er was their riſe, the other Barons haſt clearly ac knowledged a diſtinc tion now, in fo far as they haue renonced ther pri viledge of coming to Parliaments, by the 113 A& in 1587 ; and the diſtinc tion being made, and thir pri viledges renonced by the ſmall Barons in the Parliament 1427. Duplied,—That A& is introduced in their favours, and no wayes debars them, but allanerly diſpences with their abſence and the penaſty they incurred theirby, &c.—The Gentlemen founds on the *Interdictum uti poſſidetis* ; the Lyon ſayes, It's but *vetuſtas erroris*, and ane uſurpaſion. The complaiñers are the Lairds of Dundas, Halton, Polmais, &c.

Junij 1673.—Manna Kinloch, ſpoife to Jas. Charteris wryter, being Fol. 217,
No. 397. conveined before the Loſds of Secret Councill, for breaking the Sumptuary A&, regulating apparell ; two points fell to be ſpoke of, but ware not debate, because ſhe waſ affoilized throw lack of probation : the firſt was, Wheir a married woman is conviſt of the breach of a penall Statute, what the effect of the fame is in law, if it can extend to hir husband to make

¹ He grants them now to ſome who ware in poſſeſſion of them of old.

him liable in the fine, or if it will allenarly operat to punish hirselfe in hir persone, by imprisonment, or in hir goods, at the dissolution of the mariage. I think it ought not to burden the husband, else many wives, to affront their husbands, or otherwayes be avenged on them, would break it of purpose. But sie this point fully debate, at my observes upon the said Sumptuarie law: sie also the 5th A&t in 1670. The second thing was, If the transgredion of that A&t was probable by women, for being at a rousing wheir she was noticed, their was few others save women observed hir. It seimes contrare to law to find it so probable; for albeit they admit women to be witnesses in *puerperio* anent the vivacity of children when born, for carrying the tocher, yet ane absolut necessity is the cause of the singularity their, because, if they rejected women, they should never prove it, it being an A&t transacted commonly by women alone, and none else present; but *regulariter* they are not receiveable, except it be 1^o, in scoldings and small ryots; 2^{do}, in crymes of the hyest nature, as treason and witchcraft: sie M. Norvell's opinion on this *alibi, apud me.*

Fol. 222,
No. 412.

July 1673.—One James Gibbsone, a baxter in Plaifance, having been fined for a pretended ryot, in 8 score lb. in the Constable Court, during the sitting of the Parliament in August 1672, he suspended the same, upon thir reasons: 1^o, that being Constable of that bounds, he was in *exercitio officij et actus maxime liciti*, and being opposed by a drunken wife, to put in a poor persone who was dieng unto a house, he put hir by, and she fell over, and that this was all the ryot; 2^{do}, upon the fence of his innocence, he had obtained a discharge of the said decret and fine, from Mr. John Hay, and Mr. A. S[eton] of Pitmedden, the 2 Constable-deputes, and opponed the same. Replied,—That the Hy Constable Court seimed to be soverain the time of Parliament, and it was *res mali exempli* to have their decreits canvassed or questioned be the Lords: whoverer, to the 1 they opponed the decret, as to the 2^d the discharge was null, because granted by thesse who had no power; seing, after they had pronounced sentence, they ware *functi officio*, and by the Commission of deputation, they had no right to the fines or emoluments of Courts. Likeas the Deputies in other Courts had not the amerciaments, but they belonged to their constituents; and heir my Lo. Erroll had [before] their discharge

affigned this same very fine to John Ray, clerk to that Court. Duplied,—
Per l. 37, D. de R. Juris; Qui condemnare potest potest etiam absolvere, and this upon the matter was ane absolvitor more than a discharge, that they had no other salary but the fines, and so might dispose upon them ; that my Lo. Erroll's affignation was truly posterior to the discharge, but is antedaited : And that judges might discharge thir obventions as appertaining to them-selves, was clearly decided by the Lords, as D[urie] marks, on the 26 of Nov^r 1633, Lindsay : Only it was not decided heir, because the matter being referred to my Lord Craigie, he called for the probation, which was the ground of the decret ; and when he hard nothing proven, he with indignation rejected it. And really their was much cause of complaint given to the citizens of the Toune, against that Court, not only for being so summar and illegall, but also for their exorbitancy and oppression in their fines. And tho the Toune hes ever controverted this priviledge with the Hy Constable, so that he never possessed any jurisdiction within Ed^r peaceablie and pleasantly, yet he gained a greater step that Session, 1672, then ever he could arrive at before, by judging Johnston the fidler, and sentencing him to death, for killing of his wife ; wheiras, in so long a tract of tyme as the ages since he laid claime to that priviledge, he could never afford an instance, save of one,¹ whom, for slaughter, they had sentenced to dy, about the year 1640 ; but he obtained a remission.

About this same tyme, [in the moneth of December 1673] Maccloud Fol. 230, N.
 of Affint was, with much animosity, pannelled for convocating the leidges,
 &c. He had betrayed Montrose to the States in 1650, and was salved by
 the generall amnestie and indemnity 1661 ; and now it was hoped he might
 smart for it, tho on another caufe.² The verdict, upon some defect of the
 probation or tainted integrity of the witnessses clenged him : . . . see the

¹ [Interlined.] I believe it was one Reid, a painter, for killing one Allane Walwood, servant to my Lord Craostonriddell. [Margin.] Sie it in the Criminall Register.

² In the Indictment it was stated that he did “most perfidiously, treacherously, basely, and inhumanly, under trust, take and apprehend the person of James late Marques of Montrose, his Majesty’s High Commissioner and Lieutenant-General, whilst he was invested with his Majesty’s Commission under his Highness’ Seal for that effect, and delivered him prisoner to the rebels,

Adjournall Criminall Records. The Justices found the congregating 100 men in armes made heir a seditious and treasonable convocation, tho it ware not in *exitium status reipublicæ*, but only in *exitium status privatorum*, viz. my Lord Seaforth; and that it was onlie without authority, and not against it. It seemes a fewer number would not infer treason, wheir it is only *contra privatos*: see Mackeinzie's Criminales, page 44; see the manuscript E, 4^{to}, Januar 1681, Earle of Caitnes, pag. 178.

Fol. 230, N. January 1674.—Some wrights and other tradismen in Edr, having fallen upon one Andrew Foster, a bower, (see the storie in my narrative of Lauderdale's Parliament in 1673, and what followed, it's pag. 82,) and beat him in his ounе house, they ware conveened before the Councell for hame-sucken: See *Regiam Majestatem libro 4, capp. 9 and 10, nam unicuique domus sua debet esse refugium tutissimum, l. 103, D. de Regulis juris*, it ought to be ane asyle and sanctuary to him. Sir G[eorge] Mack[enzie] (whom *ex loco supra citato* my Lord Lauderdale aimed to have got censured for his freedome in pleading this cause, but lost it) alledged, that they had been provoked to what they had done; for he had not only

his Majesty's enemies, then in arms against his Highness' authority, by whom the said Marques was cruelly and inhumanly murdered; for the which, the said Neill M'Leod received the number of 400 bolls of meal as the reward of the said treasonable act; and which meal was delivered to him by Sir Robert Farquhar of Mounzie;" and that he did "assist the English rebels, under the command of Gen. Maj. Morgan, and conducted them through the Earl of Seaforth his country, which they did burn, waste, and plunder; and the said Neill did carry and drive away a great part of the plunder, and a great number of cows, horses, and other goods, home with him to Assint, while the said Earl was in his Majesty's service, and not in a capacity to recover them from the enemy. And sicklike did, [in 1669 and 1670,] in an arbitrary manner, impose heavy and grievous taxations upon all ships, both in the Royal Company, and others belonging to the subjects of this kingdom, that did touch ground in the Loch of Inver in Assint, exacting from every ship three shill. sterling, and six pence per last; ane barrel of ale for the use of the said Neill, and another barrel for the use of his bailyie; ane pair of shoone and four shilling sterling nightly, during the time the said ship lay within the said loch; and did impose upon every boat that did attend the several ships ane day's fishing weekly; and did tax and impose the double of the saids burdens upon ships belonging to strangers; and that by and attour what he had a right to do, and was in use to uplift as heritor."—*Justic. Rec.* Feb. 2, 1674. The Secret Council allowed six shillings Scots per day for his aliment while in prison, to be paid by the Earl of Seaforth, at whose instance he was incarcerated.—*Reg. Sec. Cons.* p. 99.

abused them in his ounе house with rude language, but also offered to strike them ; and it seemed to be hamesucken (tho inverted) to the master of the family to offer violence to strangers in his ounе house, wheir civility and morality obliged him to so much the more abstinence from wronging them who had entrusted themselves under his ruiff, as the laws of hospitality are keipt sacred amongs all nations, and that he hes more opportunities of affronting others in his ounе house then else wheir ; so that it feemes a more rude cryme, enterfairing more, and choaking the nature of mankind, then that we call hamesucken, wheir a man is assaulted in his ounе house ; so that, their being deli&ts on both hands done *ex incontinenti, et in calore iracundiae et lacefitus, ubi difficile est justum temporare dolorem mutua compensatione tolluntur crimina* ; which the law approves of, l. 3, p. 3. *D. de eo per quem factum erit*, l. 39, *D. soluto matrimonio : Hippolitus de Marsilijs singulari* : 234. *Sneidivinus ad Institut : in editione in 4^{to} pag. 136, supra numero 433.* The Secret Councell repelled the defence ; and after imprisonment, set them upon the cock-stule, and fyned them. What if violence be offered to a man in his ounе chop, I think it ware not hamesucken, *nam paenae sunt odio&æ et restringendæ*, L. 32. et penult : *D. de paenis* ; L. 155, p. 2. *D. de regulis juris.*

On the last of February 1674, a second appeall was given into the Lords Fol. 234,
by the Earle of Aboyne as Commissioner, and in name and behalfe of the No. 446.
Marquis of Huntly, his nevoy, in ane action pershued by the Marquis
against Gordon of Carneborrow, and fundry others his fewars, for reduc-
ing their fews, as having fallen under his forfaultor, they not being con-
firmed by the King. The Lords found the defenders few-infeftments
good, valid, and sufficient to defend against the forfaultor, especially, the
appearand air of the persone forfaulted being restored, and the forfaultor Fol. 235.
funditus tane away, as *ab initio* null and unjust, and the restitution being
non per modum gratiæ, but *justitiæ*.

When the Marquis returned from the French camp, my Lord Lauderdale perdued him judicially to compeir before the Lords of Seffion, and take up his appeall, and declare he past from it ; and which he did on the 26 of Januar 1675 ; and tho they had promised him not only a new

hearing, but gave him some insinuations to hope a redrefle; yet after a 2^d debate, they adhæred to their former Interlocutor; and so he was ather ill or weell served for his complementing them:—But the tymes ware such as no rationall man could expect a rectification from them of what had once escap't them, tho unawares; they blush't to confess what is incident to humanity it selfe, (*nam humanum est errare*) wheir their honor was once ingadged at the stake, leist they should inflamme, foment, and encouradge the insolence of many who ware watching for ther halting; and which censoriousnes was improven to that height, that they ware ready of mole-hills to make a mountain, by turning to themselves the wrong and magnifying end of the prospēct, [spye-glaſs,] and even to name and stamp what is just, legall, and warrantable, not with the pardonable nickname of ane error and frailty, but even with the most intolerable and ignominious brand of downright injustice, partiality, and subversion of the entrest of the subje&t, and the fetled laws of the kingdome. Notwithstanding all the pains was tane on the Lord Almond to passe from his appeall, and take it up, yet nothing hath hitherto prevailed with him to make him doe it; but he lives in hopes to make it rise up in judgement against them, whenever we get a fair and unpræ-limited Parliament; which may be long eneugh ere we see it.

A. fol. 235,
No. 446.

I have few or no Observations by the space of three Sessions and a halfe, viz. from June 1674, till Januar 1676; in regard I was at that time debarred from my employment, with many other lawyers, on the accompt we ware unclear to serve under the strict and servile tyes seemed to be imposed on us by the King's letter, discharging any to quarrell the Lords of Session their sentences of injustice, and was not restored till Januar 1676; so that we shall content ourselfe with remarking a few things that occurred in that gape and intervall.

A. fol. 235,
No. 449.

In October 1674, Andrew Rutherford in Jedburgh, being pannelled before the criminall court for the slaughter of James Douglas, brother to the laird of Cavers, having been most miraculously discovered at Tinnmouth-sheills, beyond Newcastle, as he was going to sea, and brought to

Scotland : in which proces he raised ane excusation on thir three heads, 1^o, A recrimination against Scot of Horfiehill, as guilty of the mortall wound wheirof he died ; this was with the designe to cast him, he being one of the most materiall witneses : 2^o, That, if he did it himselfe, he was *laceffitus*, and it was in his owne defence : 3^o, That it was not *vulnus lethale*.—See the wholle debate marked at large in other papers besydes me ; and heir I shall only point at the heads. 1^o, The King's Advocat refused to give his countenance and concurse to this excusation. 2^o, He forced S. A. Birny, who was for the pannell, to restri& himselfe to one of the heads, on this pretence, that they ware inconsistant and *contradictoria* to say another had done it, and he himselfe had done it in his owne defence, wheiras *reus tam in civilibus quam in criminalibus potest petere contraria hypothetice propoſita*. (See the case of the poor of Jedburgh contra the Toune of Edr *supra* 236.) 3^o, If an Advocat mismanadge a proces by wrong forming of his alledgeances, the party hes 3 dayes tyme in which he may retrai& what his Advocat confessed in his name ; after that, he cannot contradi& it, but it binds him. 4^o, This case of Rutherford's proved of how great importance it is to have the members of assyse brought from the place and country wheir the fact was committed, (*fideles homines patriæ*, the four half quarters adjacent,) and the *fama* most violent, for if the inquest had been burgesses of Edinburgh he might have escaped. See all thir points prosecut in other papers *apud me*. In December 1674, he was sentenced to death, for which he blamed much the inadvertance of his advocats.

About the same tyme, Seaton of Carrifton falling at variance with A. fol. 235, b.
another man, gave command to his servant to shoot him ; who did so,
and the man with much difficulty recovered : Wheirupon it fell to be
questioned in discourse how far one was tyed, *ob mandatum criminis*, for
bidding or commanding another to commit a cryme.

In December 1674, William Cockburne, merchant, was in the Secret A. fol. 236,
Councell sentenc't to the cock ftule, and banish't the Louthians, and Margin of
declared infamous, for having defamed my Ladie Oxenfurd in hir honor,
No. 450.

both in a letter, which Mr. William Clerk advocat, his brother-in-law, treacherously gave up to my Lord Oxenfurd, and in discourse. See more of it *alibi* in other papers *apud me*. See another manuscript at September 1679, page 85.

A. fol. 236,
b. No. 451.

In the moneth of December 1674, Mr. James Mitchell, supposed to be the man who, in 1668, aiming to pistoll the Arch-bisshop of St. Androis in his oun coach, was ane ill gunner, and with the ball chattered Honyman, Bisshop of Orknay (who was fitting by) his arme ; being first discovered at the buriall of Mr. Robert Douglas, the minister, and apprehended, and examined by my Lord Chancellor before witneses, who promised, if he would confess and acknowledge it, he should warrand his life : Upon which assurance of impunity, he freely confessed he was the person ; but afterwards, fearing leift faith should not be keiped to him, he refiled, and revocked his confession ;¹ and it being emitted extrajudicially, (not in presence of a quorum of the Crimall Lords,) it could not bind him, nor be a relevant ground of condemnation ; which makes confessions to be of small effect, unles done in that solemnity I have mentioned. Finding they could not reach him upon this head, the Bisshop caused endyte him as one of the traitors who ware in armes at Pentland Raid in 1666, and made him be tortured and cawed [*wedged*] in the boats [boots], to extort a confession ; but hitherto he stands to his denyall, and is still keipt in prison.

Januarij 1676.—The Advocats debarred being restored upon the 10th of Januar, our Collection and Observes returne to their former orderly channell.

A. Fol. 238,
b. No. 459.

In this moneth of Januar 1676, tuo boyes, the one called Clerk, and the other called Ramsay, ware discovered to have poisoned John Andersone, the merchand, Ramsay being his servant ; and that they did it with the help of one Kennedy, ane apothecaries man, and who contrived it so

¹ *Vide infra* Januar 1678, folio 314, wher he is arraigned.

cunningly, that it might operat lently. And tho some contended their is nothing poisonable in its oun nature, since Mithridates and sundry have accustomed themselves so to it, that it did them no hurt, but turned to their nourishment; and, in particular, what they ministrat to him ware not of a poisonable nature, but only solutive; yet, if we consider the temper of his body, sore debilitat with a flux, their could be nothing more effectuall devised to dispatch him, so that their might be no suspition or jealoufie. And tho his physitians ware of opinion that he would probablie have dyed however; yet this will not excuse them; since *L. ult. C*, *De maleficis et mathematicis*, makes him guilty, *qui occidit eum qui jure erat occidendus*; *Ludovicus de urbe Romana Singul.* 747. The temptation they had to dispatch him by this abominable fraud was, he having been for some moneths sick, during which tyme they had stollen some gold, money, and chains; and finding him like to recover, wheiras they hoped he should have dyed, they are surprized and frighted with the fear of discovery of their thift, and theirupon enter in that willanous councell and combination to make him away. Some tyme after his death, they offering to sell a gold chain, it comes miraculously to light; for they are detained upon suspition and quæstioned how they came by it: And, first, they confesse the thift, and then their having murdered him by poison. The one of them was 17, the other 15 years old. In discourse it was agitat, what if they revocked their confessions? For tho they had emitted them judicially before the justices, the judges competent to such matters, and had reiterat and ingeminat the same spontaneoufly, and with much ingenuity and sorrow, without any dreadour or fear put upon them, by many persevering acknowledgements; yet, being minors, why might they not have the benefit of revocation allowed to minors *in civilibus* wheir they are læsed, the læsion and hazard being much greater in confession of crymes, and, theirfor, *a majore*, the remedy should take place; (*vide supra*, Mr. James Mitchell's case, num. 451.) and tho their confession was upon oath, yet we know minors are reponed against oaths likewayes, *quia eadem facilitate jurant, qua contrahunt*,—(Mackeinzie's plaidings, pag. 53, *et seqq.*) It is true, the civil Cod. *si adversus delictum minor restitui postulet*, refuses restitution against crymes, but heir, *non petunt restitui adversus delictum*,

sed adversus confessionem delicti temere emissam, which even majors may retract, as Bouritius tells us, *loco citato* in Mitchell's case; then *multo magis minor, ob fragile et incertum eorum animi judicium*: and Mackenzie, in his plaidings pag. 209 and 211, is positive that minors may be restored against their confessions, *quando non potest aliter contra eum probari crimen*; where he cites both canon and civil law, *Regiam Majestatem*, and an old decision for it. And all lawyers accord in this, that the *pæna ordinaria* of death is to be relaxed to minors found guilty of crimes merely by their own confessions, and that it is to be commuted into some lesser punishment. Notwithstanding of all which grounds, the two lads were hanged, both in regard of the theft clearly proven, and for example and terror, that the Italian tricque of sending men to the other world in fuses and possets might not come over seas to our island; especially seeing it was heir vested with that odious aggravation, of being perpetrated not by strangers, (which is not so dangerous,) but by his own domestick servant, against whose snares there is no defence but sharpnes and severity, they having infinit opportunities to practise it against their masters by mingling it in their meat, drink, cloaths, &c., at their pleasure; and upon this account it is, that Cicero says, *gravius est veneno quam gladio occidere, quia difficilius cavetur*; and therefore, *unius pæna debet esse metus multorum*. The 3^d boy, Kennedy, an outed minister's son, stoutly denies; and, not being accessor to the theft, makes it very difficult to reach him, since the infamous depositions of the other two, who were *consciij* and *socij criminis*, are not probative against him, and his accession to the theft cannot be proven, tho' it's likely he was partner with him in the booty [booty.] Many wondered at the King's Advocate, that he subsumed his ditty and libell of the 31 A& Parliament 7, James 2^d in 1450, discharging the bringing home of poysen, under the paine of death; whereas, it's obvious to all, that the A& is obsolet, tho', it may be, it's the greater pity; for that sacred care and fence it makes about our persones is but twigs borrowed from the Roman law,—*Qui venenum necandi hominis causa fecerit, vendiderit, habuerit, preparaverit, plectatur pæna Legis Corneliae: (L. 3, per totum D. ad legem Cornel. de sicarijs.)*

Februarij, 1676.—*Quæritur*, If the patron of a kirk, to impede the *jus devolutum* to the King or Bisshop, present, before the elapsing of the first 6 moneths after the vacancy, one that ather embraces not or is not receaved by the Bisshop, and theirafter lets it ly over till neir the end of the other 6 moneths, and, ficklike, presents a person ather unwilling to come or not qualified, he seims fraudulently to shifft and tergiverse, and to present only to save his right; and will not hinder the *jus devolutum* any longer, and the church ought not to stand unprovided at his pleasure, but a certain tyme may be limited to him within which he most effectually present, otherwayes amit it *pro hac vice*. This was contended by the Bisshop of Edinburgh in Sir A. Cockburne of Langton's case, who keip't his kirk vacant by the space of 2 or 3 years by the aformention'd artifice, because he could not get ane indulged minister; at last he was forced to accept of a conformist. (See Act 115, Parlia^t 1592.¹)

February 1676.—The wrights and masons of Edinburgh raise a decla- Fol. 242, No. rator against the bowars, sclaiters, coupers, painters, glafiers, fivewrights, 469. plumbars, and upholsterers,—two trades against eight,—to hear and see it found and declared that thesse eight trades had not the priviledges competent to the maiffsons and wrights, nor ware capable of the Deaconrie, &c. As this was negative, so the said eight trades did raise a mutuall declarator, assertorie of their priviledges and capacity; in which, in Januar last, the Lords, after a most contentious debate, in respect of the sociall acts clearly proven, and past memory of man posseſt, found the first fyve trades had æquall priviledge with the wrights and maiffsons, ware members of their incorporation, and not pendicles; and ware capable to be ele&t ed deacons; but as to the 3 last, the fivewright, plumbar, and upholsterer, in regard their assumption was since the Decreet Arbitrall, and recent, so that they had not posſeſſion requirit to præscription, the Lords demurred, and declared they would hear the parties farther as to their priviledge.

¹ If the Bisshop present not within 6 moneths, ather in his proper patronages, or wheir the right devolves, then some affirme he amits it *pro ista vice*, and it transmits to his superior Arch-bishop, and he neglecting, to the King.

For which 3 trades it was alledged, that whatever grounds had been urged in the former debate in favors of the coupars, bowars, &c. whosse capacity the Lords had already declared, ware as binding, prægnant, and convincing in behalfe of thir three, whosse privilege was still under controversy, as they ware for the other five: they both have excercised *eodem actus sociales*; thir three trades have ever been in use to fit with the wrights and masons in their Mary Chapell corporation; they concurred and voted at the election of their deacon; they are masters and box-masters to the calling; they are judges to their essayes and assises by a similitude not unlike to the *pares curiae*, who ware *convallis ejusdem domini* in the feudall law; they have a share in the trust and management of the interefts of the corporation, *ubi onus, ibi et honos*; in all their acts, sealls of causes, assumptions, grants, and other wryts, they are denominat by appellatives importing a society, communion, and ane equall participation of priviledges. But since this nather was nor could be denied by their antagonists, theirfor I would come to the disparity assigned, wheirby it was alledged, thir three trades ware stated in a different and worse case then the other five, in so far as they had been assumed since the date of King James his Decreet Arbitrall, and the other five trades ware incorporat before, and so ware in immemoriall posseſſion, and might rationally be supposed to be comprehended theirin; but after that decreet, which is like the Toune's *Magna Carta*, containing the fundamentall and unalterable principles of it's government, they could do nothing prejudicall theirto, nor assume trades, or communicat priviledges, or any part of the administration and policy of the brugh, to any others, save thoſſe mentioned and included in the said Decreet Arbitrall. Notwithstanding of which disparity, I alledged Declarator behooved to pas in favors of my clients, unles the wrights and maifsons could say on of thir two (none of which they ware able to ſubfume upon) ather that their was ane let and impediment resulting from ſome prohibitory clause in the Sett or Decreet Arbitrall, hindring the fourteen trades from assuming new callings unto their corporations, or elſe that the particular admiffions of thir three trades are limited, and coar&at *ad speciales effectus*. As to the firſt, tho it ware eneugh to me to ſay, that it is a negative which proves it ſelfe, ay till they condefchend wheir and how it was pro-

hibit; yet I will deall more liberally with them, since it's easy to demonstrat that the Decreet Arbitrall, nather as to it's words nor meaning, does debar the trades from assuning new ones; for 1°, Their is no legislator or judge can be so quick-fighted (tho you would allow him Argus his 100 eyes,) when he is statuting or judging, as to have all the future contingencies, all the *casus novi et incogitati*, under his view and consideration, that may afterwards emerge: But the Lawyers give advice in such cases, that is, *qui jurisdictioni præest, illud ad similia producere interpretatione et jurisdictione suplere debet.* 2^{do}, Though all events cannot be provided for, yet it's manifest, from a reservation in the Sett, that some such thing hes been in their eye; for it's expressly provided, when any good head or overtur, tending to the weell of the crafts, shall be proposed by any deacon or tradfman to the Councell, the same shall be instantly authorized by ane A& made theirupon; of which kind the assuning of trades, wheirby they are much uncited and strenthned, is undoubtedly one. 3^{to}, *Ubi eadem remanet ratio, eadem debet esse juris dispositio;* but so it is, whatever reas ons persuaded the modelling and reducing the severall associations and companies of trades, which were then in being, under fourteen deaconries, the same militat still to enforce the necessity and reasonablenes of assuning new arts and trades that come in request, or spring up with the genius of the age, and which ather ware not formerly, at leift not so frequent; and which reas ons may be reduced to thir 3 heads: The 1. shall be the constitution and governement of the brugh upon solid and lasting foundations, which, in all democracies, whither supreame or subalterne, can be attained by nothing so weel as be ane æquality among the citizens, which is very rationally tempered and ajusted in this Decreet Arbitrall, by a proportion rather geometrical then arithmetical, *habita ratione dignitatis personarum;* for the merchands and trades being the 2 poles. wheirupon the intereft of Ed'r rolled, the great Councill of the brugh, consisting of 38 personnes, was made so to share the Toune's administration betuen thesse two competars, that the merchands make 20 of the number, and the Crafts 18, wheirof 14 are Deacons, the other 4 are Councillors. At the tyme of the framing of this, their was above 28 trades incorporations in Edinburgh; all of them behooved to be reduced

and moulded into 14 deaconries ; the rest of the trades then in being ware not annihilat, ware not turn'd out of the Toune, but ware brought under such and such deaconries, to which they boor the nearest analogie and semblance. 2^{do}, As the governement of the Toune required that the trades should be reduced to a definit number, that in votes they might not overpower the merchands, so the intreft and utility of the trades themselves is extreemly concerned theirin ; for theirby they dilate and extend both their number and power, and holds up their number, incase any trade, such as at present the Furrier, should decay and fail ; and they get no small acceffion to their common purse theirby. And how thir wrights and maiffons come so far to deviat from what their predecessors judged to be of so great and important advantage to them, may seem a paradox ; for they may remember, during the late animosities and debates, manadged with so great heat and zeall in 1661, betuen the merchands and trades, on of the main articles of the Merchands greevances against the Trades was, that tho their ware but 14 Deacons mentioned in the Sett, yet they had engrossed and assumed many other trades under their deaconries, for fortifieng and strenthning themselves, and for perpetuating the faction. What hes diverted the channell, I know not ; but *Timeo Danaos et dona ferentes* ; and to the present agreement betuen the merchands, and wrights, and maiffons, against thir other trades, may be properly applied that, old politique maxime *Divide et impera*. 3^o, As the governement of the City, and the advantage of the trades themselves, persuaded them to be listed and ranked under deaconries, so the interest of the subject was not a litle concerned theirin, viz. That their should be no independent trades, nor wagrant tradesmen, allowed to work at randome, without tryall and inspe&tion of some persones of skill and understanding, to oversee their work, that the leidges be not cheated and abused with base and insufficient work. As thir ware the reasons that evinced the usefulnes of reducing and fixing the Trades under particular corporations, so the same militat as pregnantly now ; for their can be no more but 14 Deacons still ; the interest of the trades is much enlarged by thir assumptions still, the peoples security against bad work requires the samen still ; so that the assuming of new trades can never be imagined

to have been prohibit. 4^o, As the words of the Sett, and reason and meaning theirof, make for me, so also custome, *qua est optima legum interpres*, stands on this syde; for in the incorporation of the Hammermen, their are eleven trades, such as spurrier, sadler, sword-slipper, &c., all assumed; of which their are 4 or 5 taken in since the date of the decret arbitrall; and yet even some of thesse lately assumed trades, as particularly the coppersmith, have been actuall deacons of the Hammermen, which unanswerable proves their is no difference as to the tyme of the assumption, whither before or after the Sett, as is pretended. And wheiras the wrights and maissions frame an argument from the acts of admission of thir three trades, as if they ware limited and qualified *ad speciales effectus*, only to work in their own trades, and not to participat priveledges;—That it is answered, in so far as their admissions are indefinit, and not exclusive of their capacity, they, in construction of law, most extend to all priviledges; *nam favores sunt ampliandi, et indefinitum æquipollet universali.* 2^o, Wheir it allows them to work in such and such work, which fell not naturally and properly under the subiect matter of their oun occupation, the same is so far from being taxative, that it's demonstrative, and in their favors, and is ane evident amplification and enlargement of their liberty, beyond what the limits of their calling would have borne them to; and *quod in alicujus gratiam conceditur, non est in ejus odium detorquendum.* Now, freedome being that which all men naturally covet, thir pershuars ambition swells no hyer than to be declared freemen, and not slaves, to be capable of the deaconrie, not to be deacons; and since in all their common evidents they are designed *confratri* (for *confratres*), let their animosities be this day buried, and all ordained, by your Lordships decree, to live together like bretheren in unity.

The Lords declared in favors of thir three trades, that they had æquall priviledges with the maissions and wrights, as weell as the other five, who ware incorporat and assumed before 1583, at which tyme the Decreet Arbitrall was made. See between the Peutherers and Plumbers in another manuscript 4to., Februarij 1679, page 58.

Februarij 1676.—I have heard some Hudibrasse the *initialia testimoni-* A. fol. 243,
No. 471, § 1.

*orum, viz. the examining of witnesses upon their age, their being married or not, &c., as ane impertinent and insignificant old style; notwithstanding that the same is very necessar to be interrogat and insert; for 1^o. If the witnesse be found lying and trinqueting in thir, it vilifies and derogats much from the weight and faith of his testimonie: but many Doctors think that *falsum* committed by a witnes *in extrinsecis, non facit testimonium corrueire in totum.* 2^o, By this it's knownen if the witnesse be past 14 or 18; before which time a witnesse is not supposed to know the hazard of ane oath, or to depone with judgement. The 3^d reason is, to distinguish them from other men bearing the same name or designation. 4^o, If they be deponing in *re antiqua*, the telling their age invalidates or adminiculateth their testimony; as they ware then of years capable to discerne or consider such things, which most alwayes be things falling under one of the 5 fences. In Saxony, Vefember tells us, they goe a greater lenth, and interrogateth the witnesse anent his wealth and riches; for if he be poor, he is suspected as more liable to be tempted. This is coincident with our vulgar objection against witnesses, viz. that he is not worth the King's *unlaw*, estimat to 10 lb. Scots; but we set it at so low a rate, that it renders the declinator altogether impracticable; for their is scarce any witnesse brought in, but he is clear to affirme he is worth that,—his cloaths, if roused, would be of that value. It should be fixed at 100 lb., or something like that: since all that's acquired by money hes growen, the price of that should augment also, especially in this age, wheirin the faith of witnesses was never more lubrick and vacillant, nor ever so much perjury discovered; so that it's a most commendable part in our law, to leive as little to the credit and probation of witnesses as can be; for it allows them not in a case above 100 lb. Scots; and really this way of probation cannot be restricted eneugh, confidering the impudence this generation has arrived at.*

Fol. 244,
No. 473.

To shut up this Winter Session 1675, and Januar and Februar 1676, with a remark should have been set doun in the beginning of it, because it happened then, viz. Captain Martin's escape furth of the tolbuith of Edinburgh, wheir he was imprisoned by command of the Lords of Session, till the event of a plea depending against him, upwards of 5000 lb. ster-

ling's value of goods he had in a manner by piracy taken out of a ship he pretended to be a lawful prize. One night he made his escape in weemens apparell ; and Patrick Wans, keeper of the tolbuith, upon a petition given in to the Lords of Seffion, got himselfe affoilzied of all negligence upon his part, that so the ſubſidiarie action might not recurre againſt him, after the debt for which he was imprifoned was conſtitute againſt him ; which would have been very difficult, he being escaped, and they having had many things which required clearing by his oath ; which absolvitor proceeded alſo on this 2^d ground of law, that his escape was meerly *casus fortuitus qui nulla humana prudentia provideri poterat*, and so could not be attribut to omiffion in point of duety ; and yet it was cryed out upon as moft unjust, both as to matter and forme, in that it would not hinder but he might be conveened by the creditors for Martin's debt, they not being heard, and so *res inter alios acta* could not prejudge them. (Vide *supra* Nov^r 1672, num. 374.)

In May 1676, Hamilton of Reidhous having killed one Armor in Leith, Fol. 245,
and instantly *fere in flagranti crimine apprehensus*, the Magistrats of No. 474.
Edinburgh doubted if their priviledge extended to judge him for the
ſlaughter. I informed them, if it had fallen out within the Toune and
ſuburbs and parts annexed to the Royalty, their was no doubt but they
might judge him, being Shireffs within them ſelfes ; or if the accident had
happened within the Canogate, or priviledges theirof, they had uncontro-
verted right to cognofce upon homicide, as Lords of the Regalty of
Brughton ; yea, might repledge from the Justice Generall ; at leift, if it
was ane eccleſiaſtik regality, he had power, by the 29 A& in 1587, to
ſit and vote with the Criminall Judge ; but their power in Leith being
only *qua* Barons, come in the place of Logan of Restalrig, their jurisdiction
as to life and death within theſſe bounds was not fo clear :¹ For tho
Barons are infeft in pit and gallows, and, by the old laws of *Regiam*
Majeſtatem, might judge ſlaughter tane reid hand within 3 funs, elſe it de-

¹ Yet the Water-bailzie in Leith is thought to have ane ampler jurisdiction on the shore. Vide *supra* Julij 1671, numero 233.

volved to the immediat Judge ; yet, by a generall practise to the contrare, they are fallen into ane absolute desuetude of this priviledge, so that one may think it lost, if such things can prescryve. Yet see Hope's Compend, cap. 8., of the power and jurisdiction of Barons, Shireffs, Lords of regality, &c., who attributes this power of condemning, within 3 funs, to the Shireff, and not to the Barons ; see A&t 142 in 1436.

Fol. 245,
No. 475. June 1676.—Elizabeth Kirkaldy, Lady Kirknes, and Robert Douglas of Kirknes, hir sone, *contra* the E. of Morton, Robert Dempster and other their accomplices, before the Secret Councell, for acts of riot and oppref-
sion, in seizing upon the pershuars boat they had been in poffession of, upon the Loch of Lochleven, and paffing theirin, and turning of all their beasts ware pafturing on the Inch of Lochlevin, called S^t Serfs Inche, *Sancti Servani insula*, and their taking away the faid boat, and detaining it ſtill. Sir John Cunyghame was of opinion that this could ſcarcely amount to a Councell buſines, being only a fpulzie, with which the Councell medled not, but referred them to the Judge Ordinar, the Lords of Seffion, unles they had ſomewhat importing a ryot conjoyned with it ; that is, that ather violence was offered to perfones, or a turbulent and unwar-
randable convocation of at leift 10 perfones to boast men from their rights, ware libelled : fpulzies ought not to be perſhuad before the Secret Councell, till firſt they be civilly prosecute before the Lords, or other judge competent, as is determined by the 33 A&t in the Parliament 1535, *in calce*. A ryot is ather made up by a convocation of the leidges, without authority and warrant of a Judge or Magifrat, and their be a gathering at leift of 10 perfones, for the law fayes, *Decem faciunt turbam. l. 4. par. 3. D. de vi bonorum raptorum l. ult. D. de abigeis* ; yea, in 1664, in a caſe of the Shireff of Aberdeen, who had con-
vocated the leidges, to throw doune ſome cruves put up in forbidden tyme, againſt the A&ts of Parliament. The Lords for the future diſcharged ſuch convocations, because not only gave umbrage, but ſome-
tymes ane occaſion and ryfe to tumultuary ryots and diſorders ; or a ryot is when the perfones have weapons, and offer violence to houſes and perfones ; for ſuch *tenentur lege Julia de vi publica et privata, vide iſtos*

titulos D. et Cod. Item titt. vi bonorum raptorum et unde vi. But the driving away of goods, or taking away, and detaining, another mans boat, without violence, by the number of 10 present, is a wrong, unwarantable, and oppressive act, and a sort of abigeat and thift, but is not properly a ryot; and, therefore, to make it relevant and sustain it at Councell, we libelled 1°, a convocation of 12 or 13 persones, armed with hagbuts and other weapons, who first endeavored to break Kirknes his boat, and theirafter threw out their cattell unto the Loch, to their hazard of drowning had they not swimmmed, &c., with this designe to get the clame once to probation; and tho every circumstance ware not made out, yet so much fact could be proven, as would agravat and evince a very illegall and arbitrary attempt. It was also advised that the Lady Kirknes, *via facti*, should without violence put in her beasts again to pasture on the Inche, fince she was *incontinenti* and recently ejected, she might *eodem modo* recover and continue hir possession. All the defence they had was, that the Earles of Morton had a right to that Inche, the Lairds of Kirknes had none, and their possession was but precarious and by tolerance, and so could never found a right,—that all they did was only by way of civil and legall interruption; but this was so slender to get them affoilzied, for if they had a better right, they should have entred to the possession by the orderly way of pershueing a removing, and the Councell is only to consider the wrong, and not the point of right, (which belongs to the Judge Ordinar,) and see who is dispossessit, and ordain them to be reponed, according to that undoubted maxime, *spoliatus ante omnia est restituendus*. It ended in ane amicable transaction; and Sir W^m Bruce, who had bought the Lordship of Lochleven and Kinrofs from the E. of Morton, gave Kirknes 3000 mks. for their kindnes to the Inche, and for the right of ane old comprysing they had upon the estate of Morton, but not within year and day of Oliphant of Gask's, E. of Kinnoull, and others.

As for libelling formall and direct ryots before the Councell, they assume in this, as in all other cases, arbitrarenes eneugh ather to find themselves competent, or to refer them to the Judge Ordinar, as they affect. I remember in 1668, Mr. John Wiseheart having pershued the

Laird of Guthrie's chamberlaine and tennents for tacking away a heck he had put on the river forgaint his lands of Balgayes, and which intercepted the eills and other fisches to come doun from a loch to Guthrie's eill ark, wheirin he was *per expressum* infect, and in immemorall possession without interruption. The Councell, tho their was no violence, ordained the heck to be put up again, reserving the point of right to be discut before the Judge Ordinar by declaratory. Item, in David Pringle, chirurgian, his libell against the chirugians of Edinburgh in 1670, they sustained the libells, tho they concerned only acts of that incorporation, and finings upon the breach and violation theirof; only it was a point of priviledges, and wrongous imprisonment was also libelled. *Infra numero* 485.

Fol. 245,
No. 476.

June 1676.—A skipper's wife in Dysert is pershuied before the Criminally Court for adulterie, confest, and suspition of murder of the child borne; 1^o, In regard shee constantly denied her selfe to be with child, till shee was, by ane order from the Bailzies of Dysert, fighted by midwifes and other weemen, who declared shee had borne a child; tho shee had called hir swelling only a hydropie or tympanum, till shee was so confounded with the clear proofes, that shee could no longer get it denied but shee had borne a child, which could not be to hir husband, for he in a discontent had gone to sea, and stayed in forrain places for 2 years space from hir. 2^o, That living in a toune and a neighbourhood wheir shee had opportunity of aid and affistance to help the birth, shee had not made use of it, and so was in *dolo pessimo* to alledge it was stilled, (tho it had been so suffocat,) shee not imploring help, which was easy for hir to doe; according to that presumption of the Mosaick law, esteming that a rapt, wheir the woman cryes, or is at such a distance as ther be none at hand to rescue hir, so shee is obliged to cry, and neglecting it is repute guilty; and the like distinction is also admitted by the Doctors in the cryme of exposition of infants; for ather they are expos'd in a solitary place, which makes the law presume a clear intention and designe of murder, *qui alimenta denegat is necare videtur si modo alimenta habeat, l. 4^{ta} D. de agnoscendis et*

alendis liberis, toto Titulo C. de infantibus expostis, ibique Perez in Commentario; or they are laid in a publick place, *ad captandam misericordiam transeuntium*, and this is repute more pardonable. 3^{to}, Shee had hid the child in the bugers [rafters] of the house, and by inspection it was found to be wholsome livelike and come to the full maturity, and some probabilitie of præfocation. The criminall Lords put hir to the knowledge of ane inquest, and they found, by the witnessses adduced for proving hir confession, that shee was guilty of adultery, and clenged hir of the rest of the dittay; wheirupon shee still remaines in prison, no sentence as yet being pronounced against hir. In strikt law by our Acts of Parliament shee may be put to death, but our practise hes not seconded our law, which is regrated by many; and it seemes unæquall that one shall be hang'd for thift, and not for adulterie, especially wheir its notor, as in this case, by procreation of children. We have few instances in our Criminall Books, wheir adultery was vindicat with death,—onlie about one or two;—the first in March 1631, hir name is Marion Alstoun, but shee was also loaded with presumptions of having made away the child; the other in 1645, called Thomfone, but shee was both a minister's daughter and wife, and had committed the adultery with a minister, and feigned a testimonial. See them in my abridgement of thesse records.¹

July 1676.—On Margaret Wilfone, spouse to Smith, merchant Fol. 251,
in Glasgow, upon suspition of the slaughter of one Wallace, ane officer's No. 486.
wife their, in so far as shee beat hir so that shee contracted sicknes, and dyed within 14 or dayes, is apprehended and incarcerated by [James] Dunlop of Housell, bailzie of the Regality of Glasgow, and keeping hir sundry moneths in prison, and never bringing hir to a tryall, it may be expecting somewhat should have been given him, as Felix did from Paull. I advised and drew a bill for hir and hir husband to the Lords of Secret Councell narrating the fact, and earnestnes to have hir innocency put to a tryall, and the great inconvenients to hir health, fame, and family, by hir continuance in prison; and concluded that the Lords would ordaine

¹ See September 1678, Knox, it's pagina 25.

the said Bailzie depute ather to infist and give hir a dittay, and put hir to the knowledge of an inquest, betuen and a competent day, which they would præfix, or else, upon sufficient and unquestionable caution, to reproduce hir to underly the law, whenever shee should be called, to sett hir at liberty; or if he was not clear to medle in it, that shee might be transported to Edinburgh, and referred to the Justices. This was to supply the defect of our law in wanting that wryt they call in England *Habeas Corpus*, by which any prisoner can bring him selfe to the bar, within 48 howers, and cause his accusers ather infist against him, or take bayle for his reentry if the cryme be bailable:—This bill was not red, because the Bailzie of the Regality promised to hold a court on hir within a moneth. I think the Councell would have granted one of the 3 alternatives; since they are the competent judges to injust and wrongous imprisonment.

A. fol. 246,
No. 477.

6 July 1676.—Patrick Wiseheart, as sone and executor confirmed to George, late Bisshop of Edinburgh, pershues the Comifars of Edinburgh and their collector for payment of the Quote of the Testaments of all persones who deceiffed within the dioceſſe of Edinburgh before the death of his father; they suspend on double poinding, against him and Mr. Alex' Young, preſent Bisshop of Edinburgh, who acclamed them as truely belonging to him, in regard they ware not confirmed till his entry to the ſaid office, and ſo the consummation, and not the inchoation, of the A& moſt be conſidered. In this competition, the Lords fand theſſe Quots fell under the laſt Bisshop's anne, and ſo preferred Mr. Wiseheart theiřin: In which the preſent Bisshop had ſmall loſſe, ſince at his deceafe the like will befall to his executors, as a part of his anne: See for annates, my obſerves on the A&t of Parliament in 1672. This deciſion diſfers from the arreſt of the Parliament of Savoy in a parallel case, obſerved by *Gothofredus a Bavo, in praxi sua criminali pagg. 86 and 87*: A lord of a mannor fermes his lands, togither with the jurisdiction of holding courts, and reaping the emolument and obventions theirof; one committs a delict, and is proceſt for it; during the dependance, the tenant's right expires, and the land is of new fermed to another; he resumes

the dittay, judges, condemnes, and amerciats : *Queritur*, To whom the mul& belongs, whither to him in whoſſe tyme of his right the cryme was perpetrat, or to him who pronounced sentence? That Senate determined in favors of the ſecond.

Jullij. 1676.—Mr. James Ramſay, Bifchop of Dumblaine, having A. fol. 251,
No. 487.
charged Francis Kinloch of Gilmerton, upon his generall letters, to pay
him 8 chalders and a halfe of wi&tuall, being ane annuity mortified by King
James in 1620,¹ furth of the lands of Markill, wheirof the ſaid Francy is
heritor, to the Deanrie of the Chappel-Royall, which is annexed to the
Bifchoprick of Dumblaine ;—he ſuspended upon this reaſon, that the ſaid
annuity was originally granted in 1587 furth of theſſe lands, by the then
Earl of Bothuell, to Mr. Thomas Craig, advocat, redeemeable upon the
payment of 7000 mks., and upon Bothuell's forfaulter, fell to Lennox,
then to Buccleuch, the donators. Buccleuch diſponed theſſe lands to the
Earl of Winton, for the behoof of Sir George Seton ; which Sir George
payed the 7000 mks. to the King, and got a grant of redempſion ; which
right is now in the ſupender's perſone by progreſſe : So it being extin-
guished, the ſupender's lands are free ; and the King being ſenſible theirof,
wrot to his Exchequer that ane equivalent annuity, in place theirof, might
be ſettled upon the ſaid Deanry furth of his few-fermes. To which it
was Anſwered for the Bifchop,—That the reaſon ought to be repelled, in
regard, he and his predeceſſors have peaceably bruiked the ſaid annuity
by the ſpace of 50 years, from 1620 till 1672, and that Francis the ſupen-
der payed peaceably from 1661 till 1672, by the ſpace of eleven years ; that
after ſo long poſſeffion he was not holden to debat what right his Maſteſty,
who founded the ſaid annuity, had theiſto ; but it was ſufficient for him, being
a beneficed perſone, to prove this annuity was a part of his benefice, and
poſſeffed ſo ; and *secundum regulam Cancellariae Apostolicae*², (*super qua*

¹ See 13 Januarij 1680, in another Manuscript, Nunton and the toun of Kirkcudbright, page 109.

² Vide Stair's ſystem, Tit. 12, Of real rights, num. 25, pag. 181 ; wheir, in my animadverſions apart, ſee 2 diſculties againſt this *Regula Cancellaria* ; 1^o, It ſeems contradictorie why *trienal*, and again *decennal* ; that's unintelligible. 2^o, It ſeems diſsonant to our law, and contrare to that Act of Sederunt in 1612, appointing 10 years poſſeffion before the Reformation, and 30 years poſſeffion ſince ; viz. ſince August 1560, as the 55 Act of Parliament in 1573 bears.

vide Gomezium, in commentario ad dictas regulas,) in beneficiis triennalis et decennalis possessor non tenetur docere de titulo, but that possession *habetur pro justo titulo*: And the pretended redemption falls within the tyme of the A&t of Parliament, restoring Bischops, in 1662, rescinding all A&s done to their prejudice, and restoring them to whatever they posseft in 1637. Replied for the Suspender,—That the rule anent *decennalis* and *triennalis possesso* is but a presumptive right; and tho it may maintain beneficed persones, wheir they are not able to shew any more, yet wheir his right can be condescended on, is founded upon, and produced, as heir in this case, and is found to be null and extinguish't by payment, that rule will not proceed; and it is just of the nature of the A&t of Parl. in 1584, anent retouring quinquenniall possession in favors of the King, which proceeds *præsumptive*. 2^{do}, The rule of the Chancery is derogat from by ane expresse A&t of Sederunt, altering the space, and settling 20 years possession of benefices to be the rule before the Reformation, and 30 theirafter. 3^o, Rights of lands in our law cannot prescryve with lesse than 40 years possession. 4^{to}, Possession that induces a right and clear title in favors of churchmen or others, most be peaceable and uninterrupted; but the charger's was *turbata*, by Declarators, &c. Duplied,—The *Regula Cancelariæ* was not merely a *præsumptive*, but a full and compleit title; because wheir a beneficed persones possesses lands or rents during that space as a part of his benefice, *lex statuit super præsumpto tanquam vero præsumptione juris et de jure, quæ omnem probationem in contrarium respuit*; for if beneficed persones ware oblidged to debate their founders rights, it would shake the foundations of the most part of benefices in Scotland, who have nothing to show but a provision, and possession conforme; a preparative that all our Bischops and Clergy are concerned at in the hyest degree. Nather does any defence arise *ex græmio* of the charger's title and right; the same being by his Majesty purely, simply, and absolutely constitut, without any qualification or reversion; so that he can never be oblidged to debate upon extrinlick grounds not contained in the foundation, especially *hoc loco* in a suspenſion, ſince it cannot be presumed he knows the conditions of his author's rights. And, notwithstanding of the grant of redemption, Francis ſtill continued to pay; and being conſcious of

the invaliditie of his oun right, he procured from his Majesty a precept upon the Exchequer for 1000 lb. sterl. in lieu of it ; and if he had gotten payment of that, he would never have made contradiction to the Bisshop's right ; likeas he payed not a 6 pence to Whyte for that annuity, so that he is *in lucro captando*.

The Lords, by their interlocutor, suspended the Bisshop's letters simpliciter, and found he had no right to the said annuity, and theirfor affoilzied Francis, and declared his lands free theirof.—This decision made all people to talk largely of bribery and partiality ; for at this tyme, Francis, and Mr. Rogueheid the clerk, his sone-in-law, ware conturying to give Halton, and some other persones, 5000 lb. sterl. in gratuity, out of the Toune of Edinburgh's revenue and cash ; which, as it made this goe smoothly, so it also anointed the wheells of the following cause, betuen the same Francy and Abotshall. The Bischops ware agast at the Interlocutor ; for it is undoubtedly of bad influence and example, to teach men to brangle their rights, the most of them leaning merely upon possession. The President took pains to appease and mitigat them, and drew up reasons in fortification of the Lords sentence, (which was stollen throw at ane unfrequent afternoon's meeting,) proving the justice and legality of it ; and gave the Bisshop of Galloway, Mr. Jo. Paterson, a copie of them ; and which softning plaister, knowing many watch for *Supra numero 446.* their halting, he uses in any other controverted interlocutors. But it seemed very unjustifiable that, in a suspension, rights of lands, and such like titles, should have been so summarily discust and annulled ; for old forme dictats that possession is to be continued, *Interdicto uti possidetis*, and the validity of the right remitted to a reduction. But their answer to this is, that they could not have legally nor warrantably judged upon his title and right, if it had not been produced, which they could not have forced him to have done in a suspension ; but they being once produced, and *in campo*, and found invalid, the Lords might instantly judge upon them, as if they had been in a reduction ; and if he had defended on his naked possession, without founding on a title, it had been more secure for him, for that would have burdened Francis with the producing and proving the nullity and invalidity of his title.—Yet, on the 21 Februarij

1677, the Bisshop of Dumblaine having produced a clear and undoubted right and progresse to that reversion, he gain'd the cause against Fr[ancis Kinloch], and the letters ware found orderly proceeded.

A. fol. 284,
No. 566.
Vide *supra*
July 1676,
numero 487.

5^{to} Junij 1677.—Tho in February last, the letters ware found orderly proceeded, at Mr. Ja. Ramsay Bisshop of Dumblain his instance, *contra* Francis Kinloch, yet he had got it stopt to the 1 of June; and now again, upon a bill pretending he would take off their 40 or rather 80 years peaceable possession by interruptions, (without condescending on any in particular,) Francis prevailed so far as to get a new stop, for producing his interruptions, till the 16 of July.

A. fol. 256,
No. 489.

Jullij 1676.—The differences betuixt the Earle of Argyle and name of Maclean took up many dyets of the Secret Councell all this moneth: He had denunced, gotten letters for fyre and fword againtest them, and neir forced them to the feilds in their oun defence, and all upon patched-up clames and decreets in his oun Courts, for contumacy, (wheiras they durst not appear,) or pretended casuallies of superiority, as escheits, wairds, non-entries, releiffs, &c.; wheiras many of their predecessors ware killed in the late King's service, and fundry of themselfes carried eminent badges of loyalty about them; and he was the son of the great¹ transgressor, which made their case favorable, tho Argile had walked legally and warily eneugh in all he had done. But his ambitious grasping at the mastery of the Hylands, and Western Ilands of Mull, Ila, &c., stirred up the Earle of Seaforth, Marquis of Atholl, Lord Macdonald, Glengary, M'Cloud, and other clans, to enter in a combination for bearing him doun, (like the confederat forces of Germanie, Spain, Holland, &c., against the grouch of the French,) who netled him so, that they not only procured to that Name a suspension of his charges, but a protection for them to come over; and ordained him to make a just, faithfull, and impartiall accompt of what was truely resting him; by which they minded to loop off considerably of his clame,—which compt he was most averse too.

¹ But in November 1676, the favor of the Macleans ebbed low, and Argyle obtained certification and intercommoning against them. See 10 Octobris 1678, pag. 26.

They alſo hounded out upon him Mr. Rory Mackenzie, advocat, brother to Tarbet, to whom he was owing 8000 mks., who charged him, and presented a caption to Sir Wm. Sharp to be signet; who keipt it up 2 or 3 dayes, till my Lord Argile made all the haſt he could, truffed up bag and baggage, and away to Strivelinc; and leif he ſhould be overtaken their, or his furniture poinded, (which is of more value then that ſumme,) he quickly retired to Innerary, and cauſed carry away all his plenishing to a ſecure place in the Hylands above Stirling. Mr. Roderick took instruments againſt Sir Wm. Sharp, for keeping up his caption, and ſtopping that diligence which ſhould be free and current to all the liedges.— He pretends a warrand from the Prefident, yet he is capitulating for the debt: they pretend a priviledge and power they have to keip and detain captions and other wryts 24 howers, eſpecially if thofe againſt whom they are dire&tēd be perſones of quality or Privy Councillors; juſt as magiſtrates of burrows will keep up captions till they adverтиſh the parties, on the pretence they may ſtay the 2d charge; but if instruments and protestation be tane after the 24 howers for not giving them furth their diligence, according to the ordinar course of law, and that they may be liable in coſt, ſcaith, dammage, and expences, and for the ſumme; I think the Keeper of the Signet may be made liable for the debt, juſt as the clerk *Supra 25*
Janu. 1672,
num. 311.

6th Septembris 1676.—One John Scot, a Quaker, and inhabitant in Leith, A. fol. 258,
having been fynd by William Carmichael, baron and water bailzie of b, No. 493.
Leith, in 100 dollars, and banished the toune of Leith, for brewing upon the Sunday, and (when challenged upon it) ſpeaking before the ſaid bailzie and Mr. John Hamilton, minister there, moft irreligiously and profanely, alledging he might as weell brew on the Sunday, as Mr. Hamilton micht take money for going up to a desk and talking, and throwing water upon a bairnes face. Scot gave in a bill to the Secret Councell, denying, at leift extenuating his fault, and complaining of the exorbitancy of the Bailzie's ſentence, far beyond the power and jurisdiction of a paedaneous judge, as he was, and far contrare to the truſt and duety of a magiſtrat, who, as he had many occasions and opportunityes of oppreſſing by reaſon

of his power, so if he abused and prostituted the same to his base and unworthy covetous ends, he deserved to be the more severely punished ; that the Lords of Seffion had oft found that the fyne of a baron bailzie ought not to exceed 50 lb. Scots, (yet this I find in Durie's Practiques to be only in caise of fyning for absence and contumacy;) that all punishments ought to be proportioned and commensurat to the fault, that banishment was one of the hyest criminall punishments nixt to death, depriving us of liberty, which we value in the next degree to our life, and that heir it was to scale his family and overthrow his very way of sustinence to banish him Leith.¹ Answered,—His guilt was extraordinary and enorme, the bailzie of Leith's jurisdiction was ample, and any magistrat might banish out of his oun territories and bounds. He was ill set, for he had both magistracy and the clergie, who sollicited stronglie against him, for both of them would be bafled if the sentence ware found unjust : The Councell ratified the Bailzie's sentence, and interponed their authority theirto ; wheirupon Bailzie Carmichael arreasted and seized on 80 bolls of malt, the said Scot had payed 10 or 11 lb. the boll for, when wi&uall was dear, and caused appryse and adjudge it to him for his 100 dollars.

A. fol. 257, No. 492, § 3. *July 1676.—Quæritur, The Roman law, in lege ultima, in fine, C. de Affessoribus,* discharges *ne quis judex vel affessor sit in ea causa in qua advo- canda patrocinium mutuavit, ob præsumptam affectionem :* which, tho' very rationall, yet to our regrate is not observed with us ; for our law puts so entire a confidence in the honesty and integrity of the Lords of Seffion, that, by 212 A& in 1594, it allows no grounds of declinator against thesse senators, unless they be father, brother, or sone ; and in Sir W^m Bennet of Grubet's case, against Moor of Otterburne, in Decr 1671, (*supra num. 283,*) they would not extend it to the King's Advocat, his brother-in-law ; see Mck's Observes on the A& of Parl. 1621, pag. 66 ; and theirfor it will not hinder, nor can he be declined on this accompt, that he was one of the partie's advocates in that cause, which is to be judged : yea, farder, in my Lord

¹ The King's Advocat thought banishment a criminall sentence belonging to a hyer jurisdiction then a Baron Bailzie hes.

Dumfermeling's action against the E. of Calendar, (which see *supra num. 480.*) Sir D. Falconer, Lo. Newton, being advanced to be a Lord of the Session, voted in that cause, notwithstanding, by a declinator given in against him, he was intreated to decline himselfe, not only in regard he had been one of Dumfermeling's advocats, but furder, (which seemed strong,) because *prodiderat et præcipitaverat judicium et suffragium suum*; in so far as the Lords having appointed that cause to be a part of his triall, by resuming the haill debate, and giving his oun opinion on it first in their presence, conforme to the modell of tryall appointed in June and July 1674; he did so, and concluded with his positive judgement in favors of my Lord Dumfermeling, which the Lords repelled, referring it to his oun discretion; who choiced to vote, tho it had been lesse suspitious for him to have forborne.

6th Septembris 1676.—The Earle of Dumfermeling (befyde the civil <sup>A. fol. 259,
No. 494.</sup> proces mentioned *supra num. 445 and 480*) pershues the Earle of Calander for a pretended ryot, alledged committed some 17 years ago, in meddling violently with some cattell and other goods pertaining to his grandmother, the Countess of Dumfermeling, and who was married to the last Earle of Calander. Alledged, *Post tantum temporis intervallum*, such trifling acts of wrong ought not to be permitted to be wakened, *ne injuria sponita recrudescant ad periclitandam pacem et tranquillitatem publicam*: that the Roman law most justly terminated *actiones injuriarum, spatio annali*, and by dissimulation and familiar converse together, as also put a period and præscription to the accusation of all crymes not infisted in by the space of 20 years after the commission. (See amongs the ouvertures for a Parliament, the abridging the pershuit of poenall actions.) Answered,— We were heir within the time allowed by the Roman law; 2^{do}, Nothing excluded pershuit in our law but 40 yeirs.—The Lords of Secret Councell admitted the libell to probation; and Dumfermeling having led witnesses, who proving they ware the common goods betwen Calander and his grandmother, and that as husband he was repute proprietar, and tho he had renounced his *jus mariti*, yet it recurred, (*id falsum,*) at leift it was *probabilis ratio, et quævis causa etiam fatua et bestialis excusat a spolio.* Dumfermeling finding thir witnesses made not for him, he gave in a bill craving

a farder diligence against witnessses, for proving his libell: to which Sir G. Lockhart made ane answer for Calander—1^o, That the dyets of the Councell ware peremptor; 2^{do}, That the defyre was against the forme and pratique of all our Courts and Judicators to crave warrand for citing in witnessses upon a 2^d diligence who ware not contained, nor execute against, in the first; and hoped the Councell would not gratify any by the subversion of the fundamentalls of law and forme. On this exprefion my Lord Halton laid hold and aggravated it extreemly at the Councell Board, affirming it was worse then their appeall, and if such infolence and refle&ctions past unnoticed, the grandeur of the Judicators might suffer diminution, and urged he might be censured and brought upon his knees for it, since other of his brethren had done it for leſſe (viz. Sir R. Saint-clair.) The Chancellor, with his usuall dexterity, parried this thrust, telling that the lawyers at the table ware the fitteſt judges of the exprefion, for if what was affirmed was law, then he conceaved the advocats could not be hindred to insert it in their consultations,—if not law, then let them be punish'd. This pointing at the Advocat, he stood up and told he could not deny but what was their asserted was law, but he thought advocats ought, even in representing law, to use submiffie, moderat, and discreet termes and expressions: for, since he heard Sir G. Lockhart offered at his place as King's Advocat, he hes keip't a peik at him. Halton answered,—It being a point of forme, the Councell ware masters of it, and it ought not arrogantly be obtruded to them; however, the Councell was not disposed to any censure, and he lost his barking. S. G. L. said he would have gone to pris'on sooner then have acknowledged ane error or crav'd pardon.¹

¹ On the 5^t of December 1676, the Councell, notwithstanding they had advanced this far in it, at last fand they could make nothing of the probation, shifted themselves of it as more proper to the Lords of Session, and theirfor referr'd it to the Judge Ordinar, which was no time after litiscontestation and probation led and ready to be advised; this was ridiculously to admit a no proces after a peremptor, but in the reasoning and debate, they inclined to think (tho' not urged by the advocats,) that this ryot of Calander's fell under the Act of Oblivion, Indemnity, and Grace, published by the King and his Councell on the 24 of March, 1674; but that I cannot see. The Lord Dumfermeling obtain'd ane order of the Inner House to call it summarily, and it was a fresch debate.

I have heard of ane A&t of Sederunt, at leift a confuetude, wheir a A. fol. 244,
Lord of the Seffion retires upon a dimission; because of the character he
once boor, he takes place of all that are admitted afterwards on the Seffion,
tho they be a&tually Senators, and he not. This holds wheir his *miffo*
is *honeſla vel caſaria*, but not if it be *ignominioſa*.

27 Jull 1676.—Sir Androw Ramsay of Abboshall *contra* Francis Kin- A. fol. 252,
loch. (See this cause mentioned *supra* in June 1673, *numero* 400.) No. 488.
It's a Reduction, Improbation, and Declarator of Francis his right to the
lands of Gilmerton, wheirin the case was deduced to the Lords in the
Inner-house thus:—

The deceift John Hepburne of Waughton being forced by the necessity
of his affairs, and the common iniquity of the tymes, in *anno* 1652, to
wodset his lands of Gilmerton, (which ware a proper part and pertinent of
the barronie of Waughton,) to Mr. John Cockburne, advocat; the manner
of the fuirty and conveyance they agried upon was, that Waughton shoule
grant him a h&eritable and irredeemable right, and Mr. John shoule, by
his back-band and formall letter of reversion apart, declare their was no
more intended but a wodfett, redeemable upon the payment of 15,000 £.
Scots to him, his airs or affigneyes, and of the expences he shoule wair
and employ upon building, providing alwayes the same did not exceed
the summe of 1000 m̄ks. Scots. Waughton being one who trusted more to
other men's manadgement then his oun, and Mr. John being an exa&
man and ane able lawyer, and punctuall to have every thing performed
to him, it was no wonder that Waughton and he differed, and that
Waughton desired at any rate to be rid of his neighbourhood. F. Kin-
loch is persuaded, by one Henry Kinloch, a coufin of his oun, and a
domestick servant of Waughton's, to enter upon that game; Waughton
and he strikes hand, joyne iſhue, and agree, that Francy shall pay Mr.
John Cockburne his money, and take Mr. Cockburne's wodset right he
had on theſſe lands; wheirupon Mr. John Cockburne is required to take
his money, to which, after ſome difficulty, he condefchends; ſo then
Francis obtains ane h&eritable and irredeemable right and diſpoſition to
the lands of Gilmerton from Mr. John Cockburne and his wife, with

consent of the laird of Waughton ; and for falving and securing all their intrest, (just as Mr. John Cockburne's bargain and suirty was,) he gives a backband or declaration of the same date with the disposition to him, and so is *pars contractus*, and more then *pacium incontinenti adjectum contractus bonæ fidei* ; by which he confesses, albeit Mr. John Cockburne had disposed thesse lands irredeemably to him, yet the truth was, Mr. John had granted a reversion of them upon the payment or confignation of the forsaid summe of 15,000 lb. Scots ; and theirfor, leift that deed should be a convention or commission of the warrandise given him by Mr. John from fact and deed, he excepted the said reversion from the warrandise, and then adds, Likeas he accepted of his oun right and disposition, with the burden of the said reversion ; and which last words and clause was undoubtedly taken and intended for the security of Waughton, and for præserving and holding up the reversion which otherwayes would have been extinguished by Waughton's consenting to Mr. John Cockburne's absolut disposition.

This being the state of F. Kinloch's right to the lands of Gilmerton, S. A. Ramsay having matchēd his sone with the aireffe of Waughton, and having, both with great paynes and considerable summes of money, near adæquat to the worth of the lands, acquired the haill appryfings and other reall rights affecting that estate, did first essay all soft and moderat courses of settlement with Francis ; but thesse amicable overtures proving ineffectuall, and being slighted, he was much against his inclinations forced to the *ratio ultima regum*, to intent this Reduction, Improbation and Declarator against this defender.

As to the clearnes of the conception of this ticket to preserve and hold up the reversion, Sir George Mackenzie confessed, that he red [it] 6 tymes over ere he understood it : and the first 5 tymes he thought it founded and imported a reversion ; but the fixt tyme, by help of right information in point of fact, he became convinced it meant no such thing, —to show us how plauisble falsehood may be, and at how small a distance, throw our darkned understandings, it may seeme to be removed from truth. Upon this, Sir Geo. Lockhart had a smart reparty, that the 5

parts of his judgement was more to be trusted and credited then the 6^t part, which was but the dregs and taplash of his wit, tho cleared by a new light; in another part, he bad the defender ranter [to join] the two ends of ane inconsistency, he was urging, togither. Sir Jo. Dalrymple had another fling, that the controverfie was not so much for the land, as for the gaudie mounting he had trimm'd it with; meaning the houfe he had built.

On the 27 of Jully the Lords advise thir depositions, and the haill proces and debate; and by one vote, find Francis his right irredeemable; and theirfor affoilzies him from the Declarator. Their ware 14 Lords sitting on the bench at the voting it; the 5 lawyers in the houfe voted it to be a redeemable right, and only a wodsett, viz. the King's Advocat, Newbyth, Goffuird, Glendoick, and Sir D. Falconer, Lord Newton: their ware 6 votes for it's being ane irredeimable right, viz. Halton, Colinton, Strathuird, Pitreichie, Reidfurd, and Forret; Nevoy and Caftlehill ware *non-liquets* in the case; the President was not discovered, fince it was gained by one vote for Francis ere it came to him, so he lurked; Craigie was ordinary in the Utter-house. Their ware 2 neck-breaks of this cause; the first was the Chancelar's staying up stairs in the revising or thresury chamber the tyme of the advysing, (which he knew of); and not only so, but detaining my Lord Kincarden with him, who was clear for Abotshall, (for Atholl, Argyle, Lauderdale, the other 3 extraordinars, ware 2 of them at London, the other attending on the committie betuen him and the name of Maclean,) and Caftlehill's neutrality, contrare to many assurances: The Chancelor's faint trinqueting and tergiversation for fear of displeasing Halton, (who agented passionately for Francis,) hes abated much of his reputation. The 2^d rub in Abotshall's way was a largeſſe and donative of 5000 lb. sterlīng, to be given to Halton and other perſones furth of the Toune's revenue, for their many good services done to the toune. By this they outshot Sir Andrew in his oune bow, turned the canon upon him, and *justo Dei judicio*, defait him by the toune's publict interest, with which weapons he was wont to doe miracles, and had taught them the way. . . . This decifion for its strangenes furprized all that heard of it; for scarce ever any who once

heard the case, doubted but it would be found a clear wodsett; and it opened the mouths of all, to cry out upon it as a dire&t and dounright subversion of all our rights and properties.¹

A. fol. 257, No. 491. July 1676.—The Lord Mordington being incarcerat in the Tolbuith of Edinburgh for debt, gives in a petition to the Lords, craving to be sett at liberty, in regard his creditors apprysers, and other infesters, had all his estate in their posseffion, and he was content to dispone the reverzion to any the Lords should think fit, to the effe&t it may be sold for their payment. The Lords refused the bill, alledging, his lawyers who had drawen it (Sir George Lockhart was the penner of it) knew not the laws nor A&s of Sederunt; for, by ane A& made on the 21 of Jull 1675, the Lords ordain the creditors who incarcerat or arreift to be cited, and called, and heard, to object against the bill, (and which ought also to be by a bill of suspension, relaxation, and charge to put at liberty,) which he had not done; and heir they would not consent to his liberation upon his disporning of the Scots estate, unles he also made over to them his English entrest; which he conceaved, as the Scots law could never reach, so it could never force him to denude of it; and, tho their ware no A& of Sederunt for it, naturall æquity persuades that the parties interessed be heard, (*i. 8. D. de Aqua, et aquæ pluviae arcendæ.*) Then Mordington caused cite, and require them all by a nottar, before witnessses, conforme to the said A&, and produced the intimation with his bill. The Lords again refle&t on his Advocats, and found it not sufficient till he raised a summonds of *bonorum*: and yet the method aforsaid might feeme equi-valent, and to be dispenced with in a nobleman; but he was a Hamiltonian. Then the President, upon a bill, gave him a deliverance, permitting him to goe abroad in the day tyme with a guard, he alwayes returning before 8 a cloak at night; it alwayes being on the Magistrats their perill if he made his escape: with which quality it was just as good as no licence; it took back with the on hand what it gave with the other; and the Magistrats would not obtemper that warrand, since they could do it

¹ A full report of this case is printed in Brown's Supplement, vol. iii. pp. 78–91.

without such ane order, if they minded to run the hazard. At laist, in Februuar 1677, the most part of the creditors consenting, Mordington was by the Lords sett at liberty, without a formall *cessio bonorum*: which seem'd strange.

July 1676.—*Queritur*,—What is to be done with Quakers and Ana-^{A. fol. 257,}
baptists, who are also called *Mennonista*, who refuse to swear? Whither
^{No. 492, § 1.} they are to be holden as confess, if they be parties, or compelled to depone,
if they be led as witnesseſ? Joannes Bouritius, in *Tractatu de officio*
Judicis, cap. nono, pag. 18, ounſ the affirmative, ſince their humorous
peeviſhnes is not to be indulged or encouradged by law, nor the truth
theirfor to be concealleſ, else they ſhould be in a better caſe then the
orthodox; he alſo ſhows, *ibidem*, the way of ſwearing Jews, viz. by cauſ-
ing them lay their hand on the Decalogue, and repeiting the 3^d command,
Non affumes nomen Domini in vanum. With us, if theſſe phanatick ſec-
tarians be content to declare the truth as in the preſence of God, (which
many of them are willing to doe,) the Lords accept of that (as in the caſe
of Burnet, tutor of Leyes,) as ſufficient and æquipollent to ane oath.

6th Septembris, 1676.—My Lord Halton, Threfurer-Depute, as coming ^{A. fol. 259,}
in the place of the late Earle of Dundee, by the gift of *ultimus hæres*,
^{No. 495.} obtained a decreet at Secret Councell againſt the toun of Dundee, finding,
that as Conſtable of Dundee, he had the haill criminall jurisdiction within
that brugh privatively, and the civill cumulative; and theiron he ſped a
ſignator, and took infeftment about this tyme in that his jurisdiction at the
Mercat-Croce of Dundee: This inſignificats their privileges as a brugh
royal.¹ They have raifed a declarator before the Seffion againſt Halton;
but as it is now pack't, they can scarce expe&t ordinar justice their, and
may weell fortify his right by a decreet *in foro contentioso*, which even the
ſubſequent Lords will be tender to reverse: ſo it ware more adiſeable

¹ The leaſt that can be granted them as a brugh royll is a baron's power,—*Mixtum imperium ad vindicandam et explicandam suam jurisdictionem sine quo ſubſttere neguit*; L. 2. *D. de jurisdictione*.—A German has wryt *de jure constabularij*.—*Vide infra ult. Nov^r 1676*. Halton and Dundy, and the citation their from another manuscript page 62.

that *res* be left *integre in statu quo* till ane squall hearing can be got; for it seemes uncontrovorted that he arrogats and assumes more than ever Scrimgeor of Dudhope had, who ware men inferior to none in vanitie and pride; for their power was only to keep the King's peace, and guard the toune of Dundee during the tyme of a fair, during which their was a great resort and confluence of strangers and much bargaining and drinking, and so a probable few quarrells might enshue: And this was the only reasoun for which I find Constables ware ordained in burrows-touns. Our burrows of old ware so inconsiderable, they needed this auxiliarie assistance: as Kennedie of Carmucks was Constable of Aberdeen, and Erskin of Din was Constable of Montrose; and for their pains in guarding the toune during the tyme of their fairs, they had some obventions and casuallties and fines. Hence I find, by the 60 and 61 A&ts of the Parliament 1456, complaints ware given in against the Constables of Castles as a greevance, in exacting stresses of the subjects that came to the fairs with their creams, and which oppression is forbidden till the Parliament confider [whither] their infectments bear them to thesse exactions or not. And to prove that the Constable's power was not universall all the year, but only at set particular tymes, the jurisdiction of the Hy Constable, the Earle of Erroll, is ane convincing argument theirof; for his power was only during the fitting of the Parliament in that toune wheir it held, for guarding the King, Nobility, and members of Parliament, and his old wryts bears 4 miles about. See the Report in 1631, sent to the King by some he had commisionated for that effect, containing ane accompt of the Hy Constable's priviledges.

Quaritur.—If the Constable of the Castle of Edinburgh hes any jurisdiction within the toune during the tyme of their fairs?

A. fol. 259, b. 10 Octobris 1676.—One Major Henrick Balfour, borne in Sueden of No. 496. Scots parents, having tane a commission as a privateer, or a letter of marque, from the King of Sueden, for bringing up all Danish and Dutch ships, and their allyes and confederats, and keiping it blank in the name, &c. coming to London, and agreeing with one Captain Pidgeon, who did out-reik a frigat, and went togither a caping; and, having taken 2 prizes,

the one uncontrovredly just being a Dane, the other belonging to the citizens of Weymar, (*Wismarium,*) within thesse 12 moneths belonging to the Croun of Sueden, and tane from them by the Danes, and still in their posseſſion. Upon this Balfour and Pidgeon differed, Pidgeon contending he would have it made prize; Balfour concerned himſelfe to have the ſhip liberat, because his master the King of Sueden lookeſt upon Weymar as his oune country and ſubjects ſtill, tho in the Danish posſeſſion, and, theirfor, will'd that none of their ſhips ſhould be moleſted as enne- mies. The conteſt turnes ſo hot, that after they have put their two prizes into Leith, and their caper and frigat, by ftrefſe of weather, is driven to ſea; Pidgeon, by force, threats, and the aid of the men aboard, extorts by oppreſſion and bangiftry, the blank commiſſion from Balfour, and fills up his oune name in it. At laſt the frigat getts into Aberdeen, wheir Balfour, by his truncheman, complains to the magiftrats how Pidgeon had violently robbed him at ſea of his commiſſion, and had filled up his oune name in it, and was reſolved to ſlip to ſea with it and the frigat, tho he was a party ouner of it. Upon which repreſentation, the Bailzies of Aberdene cauſed call Pidgeon before them, and finding he had tane the commiſſion from him, and lately filled up his oune name in it, they ordained the commiſſion to be exhibit and ſequēſtrat in their Clerk's hands, till the Secret Councell, or Judge Ordinar, the Admirall, ſhould determine who had beſt right to it; and of conſent took the faills and anckhors from the frigat till they ſhould peaceably agree. As for the Weymar ſhip brought up as prize, the Judge-Admirall laid on his arreiftment upon it till he ſhould cognofce upon the matter; for within the ſea-mark the Lords of Seſſion's letters of arreiftment and poinding are no warrant, but the Admirall's; notwithstanding wheirof, William Carmichael, water bailzie of Leith, upon application theirafter made to him by Captain Pidgeon, did bring the ſaid ſhip to the harber, and break the Admirall's arreiftment, and liver the ſhip, and intromit with fundrie of the goods theirin, embezill the corne with which ſhe was loadned, and take away a cable worth 100 lb. English. Upon this matter of fact, their ware 2 libells for pretended ryots perſhuied before the Secret Councell, in this moneth of October: The firſt was, at Captain Pidgeon's iſtance,

against the Magistrats of Aberdeen, in oppressing him, taking his commission from him, securing and stopping his frigat, impeding his journey to his great damage, and concludes restitution of the commiffion and faills, and to be decerned in 500 lb. fterling, *nomine damni*. To which I answered, for the Magistrats, that tho they ware not oblidged to anfwer, in regard their ware not 15 dayes betuen the day of their citation and the day of compeirance, which is requifit in all libells before the Councell, and much more benorth Dee, (*vide 25 A& Parl. 1600,*) yet they ware fo conffious to themfelves of their oune innocence in their demeanor and deportment, that they ware willing instantly to be tryed ; and theirfor their defence was, they had done no wrong, because they had done their indispofable duety for securing the peace, and prote&ting a ftranger in their harbor, keeping the affair inter, they not having medled with the point of right, but meerly fequestrat the poſfeſſion, *ne occaſio fierit majoris tumultus :* (*Vide Tit. extra. in decretalibus, de cauſa poſfeſſionis et proprie‐tatis,*) That by Pidgeon's oune confeſſion, it appeared he had lately filled up the commiffion, and that it was originally in Balfour's poſfeſſion. If Judges and Magistrats be ftaged and impannelled, and abſtracted from their administrations, because they did their duety, then miserable ſhall their condition be, and at that rate no man of honour will embrace it ; —that cannot be a ryot the omiſſion wheirof would have been criminall : If they had not done what they did, they would truely have contracted guilt in refufing a neceſſary conſequēnt of their governement : *Satius eſt (ſayes l. 5, C. in quibus cauſis in integrum reſtitutio neceſſaria non eſt) in tempore occurrere, quam, vulnerata cauſa, remedium querere.* This is a libell wheirof none elſe could have been guilty but a ftranger. Magistrats are invested with a publi& capacity ; they represent his Maſteſty ; they are guardians and watchmen within their oune bounds and precincts, and anſwerable for diſturbances, if they might, by their authority, have prevented or coerced them ; let him then know, that the justice of our nation, conforme to the laws of all other poſliſhed kingdomes, makes a diſference betuen ane injury done *privatæ perſonæ et publicæ*, and that our old A&s of Parliament have wiſely check't, and ſeverly puniſh't, any who, without reaſon, miſrepreſented or murmur'd Judges and Magistrats for doing their offiſces.

The Lords found the Magistrats of Aberdeen (their was only one present in name of the rest, viz. Bailzie Gilbert Molyfone,) ware so far from having done any wrong, that they gave them solemne thanks for doing their duety, and affoilzied from this groundles libell; and, for his calumny, fyned Pidgeon in 20 lb. sterling of expences, to be payed to the Toune; and ordain'd him to ly in prisone till he payed it;—but they could have made his frigat doe it.

The second libell was at Balfour's instance, against Pidgeon and Bailzie Carmichael, narrating how he had obtain'd a commission, agreed with Pidgeon, and who, under the King of Brittaine's flag, had treacherously seized upon and beguilled a ship belonging to the toune of Weymar, had by oppression tane his commission from him, and, tho he was an Englishman, had filled up his oun name in it, contrare to the King's treaty of peace, and articles theirof, past at Breda, both in 1667 and 1673, betuen his Majestie and the Stats Generall of the United Provinces; and that not only so, but by all means fought to gett the said free ship declared prize; and, to enhance it the better, he and Bailzie Carmichell entred in a pacction togither, by which Pidgeon sold a part of it to Carmichell at a shamefull undervalue; who theirupon, contrare to the duety of a magistrat, and without all regard to the Admirall's arreifment laid upon the said ship, (which is a soveraigne and supreame jurisdiction,) he caused liver the same, and hes fraudulently abstracted, embezilled, and intromitted with sundry of the goods theirin, which not only is the cryme of forning and opprescion, prohibit by many A&s of Parliament, and the constant pratique, but is also a manifest and dounright prostitution of the honor, interest, and authority of magistracie, who, by whow much more occasions they have of malverfing, are both the more dangerous and untolerable, if they abuse their power; and which was so much the more insolent that it was palliated, and plaistered over with fair and plaufible pretences, and ane abusive cullor of a legall and orderly procedor, tho nothing could indeed be committed more disorderly; for, having caused cite the complainer Balfour before him, tho he had no imaginary jurisdiction or right of cognition in the matter, both because most incompetent to a *pædaneus judex*, as he is, as also because the Admirall's undoubted

jurisdiction was founded by prevention in laying on the arrestment: And, first, in refusing Mr. David Gray, proctor for the complainer, a sight of the libell, which is against the laws and practise of all nations, *sui ipsius defensio* being *juris maxime naturalis*, and never was a sight denied to a defender. Nixt, he wrongously imprisoned Balfour, upon the pretence of not finding caution. 3^{to}, To show the unanswerable informality, præposteration, and injustice of the Bailzie's sentence, it's decerned on the same day that a sight of the libell is refused, and that same day *cautio*, both *judicio sibi* and *judicatum solvi*, according to the custome of thesse courts, was offered, and yet it was decerned, so great præcipitation was used;—and theirfor concluded reparation of the dammage, and punishment in their persons. To this it was answered, 1°, That Pidgeon was a Frenchman, and had lived long their, and so was not tyed by the King's *private leges belli vel pacis*. 2^o, Denied absolutly all paction betuen Bailzie Carmichaell and Pidgeon anent the enhancing that ship, or their embezilling hir loadning. 3^o, For taking the commiffion, denyes any violence, but that it was given him voluntarily, as being haill owner of the frigat. 4^o, Balfour discovers in this complaint *propriam turpitudinem*; for the taking a blank commission for caping is *contra jus gentium*, seing in all commissions *personæ industria eligitur*, and the Prince, granter of it, should cause them find caution, and must be anfuerable for their actings if they exceed their warrand. 5^o, In cases of ryots in any Court, and even before the Councell itselife, no sight of the proces is given, because the dyets are peremptor, and they get a full copie of the libell; and, since they may come *instructi* and *parati*, their procedor is summarie, *de plano fine strepitu et figura judicij*. 6^o, As to the pretended breach of arrestment,—1°, It ought to be repelled, becaufe Bailzie Carmichell knew nothing of it; 2^o, As *ignorantia* excuses, so *quævis probabilis causa* does, and which ware heir; for 1°, *Constat* from the toune of Edinburgh's charters that they have ane admirall's jurisdiction within the shore of Leith; so that it is a greit mistake to call him a paedaneous judge, only the Toune ware forced to restrict that clause in their charter, —see the compend of the Toune's statuts *apud me, anno 1636*,—and, whither the Toune's right and jurisdiction theirin was valid or not, was

cumulative or privative, Bailzie Carmichell was nather obliged to know nor to debate ; 2^{do}, The corne was heating in the ship, and their was danger of setting the ship on fyre, and not only it, but the rest of the ships in the harbor. I think the fear of heating and spoiling was reason eneugh, and as to the fyring of ships, it's ridiculous, for corne separat from the straw cannot fyre : some alledge, in a stack it may ; others say, it will smoak and consume away their, but never fyre of it's oun accord ; however, I think an arreiftment hinders not such cases of necessity for præservation : What, if a barne yeard which had been arreifted ware on fyre, might not one, without the leist breach of arreiftment, medle with the cornes to save them and pull them out of the fyre ? It's ridiculous and against all charity to imagine such a restraint : besydes, breach of arreiftment is a pænall action *de dolo*, and so *quævis causa excusat* ; and repeated the former grounds against empannelling and murmuring of judges for doing their duety, or even for every mean escape. Likeas Mr. William Aikman, as proctor fiscall for the Admirall, compeired and craved their Lordships would ather remit the cognition of the affair to the Admiralty, at leist would be pleased to cognosce and decide with caution, tenderneſſ, and reservedneſſ to their arreiftment and interest.

The Lords referred that part of the libell anent the taking of the commiffion from Balfour by violence, and the merits and grounds, if the Weymar ship was a juſt prize or not, to be tryed and cognosced by the Admirall ;¹ found the alledgeance of necessar intromission for præservation, relevant to affoilzie Bailzie Carmichael from breach of arreiftment, and affigned him power to prove the ſame by witneſſes ; upon which they having deponed affirmative, the Lords affoilzied him from the libell, which was clamorous eneugh. The nixt day the Admirall keip't a Court, in which he affoilzied and freed the Wifmar ship, because it was brought up by ane Englishman uſing a Suede's commiffion, contrare to the King's articles of peace. 2^{do}, He cancelled the commiffion, both because *ab initio* tane blank ; 2^{do}, because filled up in ane Englishman's name ; 3^{do}, because done by open force, — that ſo none might afterwards be abuſed or deceaved

¹ He about twenty dayes after this made his escape out of the tolbuith of Edinburgh.

theirby. 3rd, He ordained Pidgeon's frigat to be liable for the damages and embizilments done to the said ship.

A. fol. 261,
No. 497.

11 Octobris, 1676.—A feild conventicle having been keip't upon the lands of Pentland, Sir John Gibsone, one of the late Clerks of Seffion, is fyned by the Secret Councell,¹ as heritor theirof, in 50 lb. sterling, upon the late A&t of Secret Councell in Aprill 1676, declaring the proprietar of the ground shall be liable for the conventicles keip't upon his land. It was alledged by Abotshall for Sir John, that it ware a cruall streitch to extend the A&t to him, seing it could rationally be interpret to mean no more in æquity, but to curb the fond inclinations of such heritors and landlords as ware found to be disloyally inclined, or disaffected to the present governement in church and state; and a farder prospet and designe the said A&t could not have in nature: But, as for Sir Jo. Gibsone, all knew he boor the marks of loyalty and sufferings about him, and was, beyond all exception, favourably principled as to the governement; and was lying sick, of which, in all probability, he would never recover; and, tho he had been weell, it exceeded his power to have refisted or dissipat 2 or 3000 men. Halton, who had a peik at Sir John, answered, the A&t was generall and indefinit, without a distin&tion, and it would be a convincing proof of their impartiall justice if they shewed they had no regard of persones;—*Tros Rutilusve fuit nullo discrimine habebo*, and that he had his releiff of them who ware present at the Conventicle reserved by the A&t, and he might as weell have dispersed them, as my Lord Colinton did, and for which he had the Councell's thanks. Answered, That the tenentry of Scotland was so low, that they had much ado to pay their masters ferme, much leſſe pay fines for Conventicles; and it ware a unpleasent task to make masters executioners for harassing and beggaring of their tennents. Nothing would doe, but the Alexandrian fword of a vote did cut the Gordian knot, *tanquam ratio ultima regum*.

¹ In changing or taxing of holdings in Exchequer, they ensnare the party by offering him the declaration if they suspect him. See Act 2^d in 1670.

Eodem die.—The Earle of Linlithgow having exhibited a complaint against Alexander Milne, Provest of Lithgow, that he had refused some of his fogers quarters and vivers in his toun, as they ware going in the countrie's service for apprehending and bringing to Edinburgh thesse Highlanders that had oppressed the Laird of Lawers ; and he being called to the bar to answer for him selfe, awowed it all, and said he had reason to doe it, since thesse companies ware owing 11 or 1200 lb. Scots of arrears in that toun, and he thought they might pay the old, ere they contracted new ; and he saw the bute of their malice ran against the Burrows ;—with some such impertinent stuff, his head being hot with wine. The Councell resented it ; and Halton (who lik't him nather for his resemblance of, nor dependance on, Kincarden, and for contradicting the affair about the copper money, of which see *infra*,) proposed he might be instantly punished. The Advocat alledged a libell ought to be formed first, and given to him to answer. It was answered very weell, that formality needed not heir, since they ware all ear witnessses of what he had spoke, and so might proceed summarly and instantly. And so they voted him out of his Provestrie, declared him incapable of all trust, and sent him to prison : Since, upon this deprivation, another is elected proveft, and upon baill to re-enter, he is liberat from prison, especially on a testificat bearing his indisposition.¹

At this same tyme, the Secret Councell, at the desyre of the Royall Burrows, returned and re-established the Staple-port of the Scots nation again at Campveer. See the proclamation, and many other papers anent this matter, *apud me*.

The Burrows also ware præparing ane addresse to the Secret Councell for ordering the coining of more copper money in turners, on this pretence, that it was worne out ; which was only to gratify Halton, and could not be legally demanded by a particular Convention of the Burrows ; yea, not by the generall, who are only a committee for

¹ Halton procured, against next Councell, a letter from his brother approving what they had done against Provest Milne. However, they released him upon baill.

Trade outward and inward, and no wheir a third estate, but when assembled in Parliament; and the embafing our coin by too much copper money is, and was, one of the greevances in 1673, fitter to be restrained (see my notes on it) than to be supplicat for. See 29 A& in 1449. (Vide *infra*, num. 506.)

A. fol. 264,
No. 505.

8^{mo} Novembris 1676.—Abernethie, skipper in Leith, *contra* Cornelius Neilson and Gilbert Fyffe, bailzies their. This Abernethy having committed a ryot in Leith, the bailzies convein'd him before them, and fyn'd him in 100 lb. Scots. Of this decreet the party obtains a suspenfion, and intimats it. The partie injured by him craves lawborrows of him; the bailzie commanding him to find lawborrows, he refuses, wheiron they put him in prison; he raiſes criminall letters before the Secret Councell, complaining of wrongous imprisonment; and that they, after intimation of the Lords letters of suspension, had proceeded to incarcerat him for his fyne, tho they ware *functi officio*, and that they did it *spreto mandato judicis superioris*. Anſwered,—They did not imprison him for the fine, but for refusing to find caution to ſecure his neibhour of bodily harme. Replied,—Offered to prove it could not be for that, because he was 12 howers in prison, ere lawborrows was ſought of him, and then he offered caution, and it was refused. Duplied,—Offered to prove *per* the clerk, officers, and other *membra curie*, it was required ere he entred the prison door, and the caution he offered was juſtly refused, because insufficient. The Councell ordain'd the man to be ſett at liberty, he paying in the fine to the Shireff-deputes of Edinburgh, who had also conveened him before them, and fined him, *quo jure, quave injuria* might not be quæſtioned with Halton, who was Shireff principall; yet in cumulative jurisdictions, ſuch as this was, the first attacher is præferred. And as to the wrongous imprisonment, ordain'd the clerk, officers, and other members of Court to be examined upon the occation theirof; whoffe depofitions, after ſundry dayes attendance, on the Secret Councell being advised, they found the Magiftrats had done no wrong, and theirfor affoilzied them. Bailzie Neilson urg'd to have him censured for murmuring [against the] magiftracy, but it was not noticed. He was also of the opinion that he might have pro-

ceeded and decreeted notwithstanding the suspension, since it was raised before he had pronounced sentence, and so related to a *non-ens*, and behoved to raise a new suspension ; but it was told him it was not safe. Some think the bailziees of regalities, baronies or brughs royall, and Shireffs, are stinted in their fines for blood to 50 lb Scots.

16 Novembris 1676.—*Supra* at number 498, § 3°, we have made A. fol. 264,
mention of a petition was preparing from some of the Burrows, for b. No. 506.
licence to import forrain gold and silver, and coining more copper money ; which, tho cast in in the crampet, yet was the main designe of the bill, and the rest ware but as a sugred pill, to make this glyde over most currently. This day the bill was presented. The first part of it anent Spanish, French, and other forrain species, alledging, amongs other causes of the decay of trade, the not-importation of money is one ; and this proposal is the best remedy theirof, needs not be heir set doun, because we have the proclamation ishued furth upon it in print, only they have not printed that part which relates to the licence of stamping turners. On the reading of the bill, sundry of the members of the Secret Councell was ready to applaude it, and desire to have it committed. Sir A[ndrew] Ramsay of Abbotshall craved to see who subscrived the bill. Answered, 'The Provest of Edinburgh, as præses of the meeting, in name of the Burrows. He replied,— Thesse gentlemen ware burgessees, but could not be called the Burrows ; for their Convention met but once a year, and hes no power to delegat ; and even the generall meeting had no power to medle beyond what was contained in the heads of the missive calling them togither, of which coinadge was none. Nixt, he behoved to take the freedome to say, that the first part of the A& anent forraine coins was but to debate on the king of Spain's gold, a thing we would not be much troubled with ; And for copper money, he conceaved it could no way be of advantadge to the country, since there was so great a superfætation of it already, that we ware likely to be opprest with it ; especially, confidering that England, having now made copper money of their own, our turners that went the lenth of Yorkshire, will regorge and turne back ; and for our copper moneys influencing and advancing trade, he craved leave to differ, since

trade confiscted in export and import, and turners could be used in nather ; That the matter of coining money is one of the greatest concernes, and most important of the kingdome, and hes ever been ouned and asserted by the King and Parliament as such ; and he remembers he hes red ane old A&t of King James the 2^d, (it's the 29 A&t in 1449,) discharging to strike money without command of the King under his Great Seall ; and of a later A&t of King James the 6^t, (it's the 17 A&t in 1567,) prohibiting any lay'd money to be made without consent of the 3 estates of Parliament. All the answer this got was from Craigie, the Justice-Clerk, That if this particular Convention was not warranted, the nixt generall meeting might authorize what they had done, or else disapprove and censure it. Abotshall replied, that was not eneugh, the Councell's authority was incroach't upon, who are more proper to consider of coinage then 5 or 6 burgers, who had no power ; for he knew the constitution of a Convention as much as any at the table could, his employments that way having instrusted him ; it is one of the maine concernements of the government of the state, and it might have sett thosse gentlemen to have informed, and not to have petitioned his Majesty's Councell to their dutie, &c. Lord Lithgow alledged, Their was a great scarcety of turners in the country, and it was verie necessar the bill should be committed. Abotshall repartied, He knew no penurie in the places he frequented ; and as for committing, he thought such ane affair was not to be huddled up, but to be agitat and debate in full Councell ; for the event of committments was, that the thing ordinarily past upon the trust, credit, and report of the members of the committee, whosse care persones are loath to call in doubt : But fince he found so many encline to commit it, and it might be his lot never to have another occasion to argue the affair, and theirfor he behoved to mind them what outcry the black money made in James the 3^d: tyme ; what complaints ware against it in 1641, as appears from the 6^t A&t of that Parliament, pag. 79 ; and it may be, it will not be improper that amongs the greevances of the last Parliament 1673, the copper coine was not the leist ;¹ (See the complaint of it sett doun in the

¹ See the folio manuscript E. 5th Martij 1681 anent the crying up the mark peices, pag. 191.

History of that Parliament *apud me*, pag. 65 *et seqq.*) and he hop't the Councell would not countenance any thing of so generall dislike. Halton gave this a very sober returne, and only said, Greevances was not *nomen juris*. Then it was put to the omnipotent wote [vote], and a committee was carried. But in regard Abotshall seemed to understand so perfity the affair, it was mov'd by one he might be upon it, and one of the fix ; which was done ; yet they ware feared to call him. Theirafter they had sundrie meetings, yet delayed to make any report till the 27 of Februar 1677, 3 moneths and a halfe theirafter ; at which tyme Abotshall pertinently enlarged all the former grounds against it, tho the Earle of Kinghorne was hounded out to borrow the lend [*to give the loan*] of his tongue for that day ; but he was not minded to sneak from his compearance. The vote determin'd the controversy, wheirin Abotshall was left *solus* in the negative ; and the ArchBischop of S^t Androis¹ was pleased, in face of the Councell, to say, “That bolt was soon shot.” This went not without ane answer ; for it was boldly told him that proverb was only used for foolls : In his “No” he had serv'd his conscience, and he could not understand how any should be quarrelled for their vote, since all ware free and sworne to give their opinion. The Bisshop would have detorted this, as if he had refle&ted on him as acting inconscientiously, and thought Halton, for whom he was fighting, should have concerned himselfe in it ; but the Councell ware not disposed to espouse quarrells.—And thus ended that heat in Councell, whosse A& will put above 4000 tb. English of free profit in Halton's pocket ; for the pound of copper, which they buy for 16 shiling Scots, will afford them when stamped, 36 or 40 sh., so that they have the one halfe of the other ; allowing them besyde 6 pence on each tb. for their pains and workmanship.

Ultimo Novembris 1676.—This day the toun of Dundee was conveined A. fol. 267,
b. No. 511.
by my Lord Halton before the Secret Councell, for judging a ryot, which only belonged to him, and refusing to keep prisoners for him, &c. con-

¹ The designe of churchmen in judicatories, is mainly, *nequid detrimenti Ecclesia capiat*, like the Roman *Tribuni plebis* for that Republick.

forme to the decree he had got against them : (*Vide supra*, Sept^r 1676, num. 495.) He got their Provest and Baillies imprisoned in the tolbuith of Edinburgh, and fined the Provest in 4000 m^s., and each of the Baillies in 3000 m^s. ; and the toun of Dundee ordained to find caution of lawborrows, under the paine of 20,000 m^s., for Halton and his servants security at the hands of all the inhabitants of Dundy :—Which was thought very strange and hard to bind, for the humors of peopple, who might in a pike to the Magistrats cause them incurre the failzie ; and it wants ane ordinar stile. This caused great outcry.

A. fol. 267, No. 512. *Eodem die*.—Strauchan of Glenkindies remission being presented this day in Councell, was stop't and opposed by his Majestie's Advocat, Because it was not past the sealls, no affythment nor letter of slayns ; and 2^{do}, It boor only remitting of slaughter ; wheiras this was a most grosse and infamous murder, with most odious circumstances, whille the poor man was under his power ; and so falls under the case of that statutorie treason, mentioned in the Act Parl. 1587, and so will forfeit his lands, and no remission can be given of such. (*Vide alibi*, in my collection of the Occurrents of the Seffion at the 3^d of Januar 1677, a letter from the King stopping it.) Having made his escape, he was apprehended and incarcerat of new again.

A. fol. 267, No. 513. 5^o Decembris 1676.—Fordell Henderfone, as air of tailzie to Monteith of Randiford, obtain'd at Secret Councell the chartor kift to be given up to him, and Monteith of Carybber to be dispossess'd and himselfe put in possession ; because the beginning of Carybber's possession was precarious, as a factor, and the disposition by which he acclaimed the estate was suspected of falsehood, and improbation of it depending before the Lords of Seffion. It was wondred, how the Councell could find this a competent busines for them, it nather being a ryot nor *metus majoris tumultus*, but meerly civil. When the improbation came to be tryed, in Februar 1677, their being only 2 subscryving witnessies in the disposition, one of them, who had been Randyford's servant, and who was mightily suspe&ted to be bribed, disouned his subscription ; which tells us, that frequent error of

taking the subscryvers ounē men servants or sones to be witnessēs in the wryts granted by them. Mr. Geo. Norvell ever advyſed that wryts, especially if of moment, ſhould be ſubſcryved before famous and honeſt witnessēs; and yet it's little looked to, which draws many writs in hazard, mean fellows being eaſily corrupted to deny their ſubſcriptions.

Eodem tempore.—The members concerned in the Royall Fisching A. fol. 267, b.
No. 514. Company (of whom ſee *alibi* in my obſerves on the Parliament 1672,) met at this tyme to choice manadgers and dire&tors; wheir Halton ruled all by getting the King's 50 votes affigned to him by the King's letter; his brother and the Dutchesſe their 10 votes, and his ounē 2; for every 100 lb. ſterling gives a vote: Now, by thir 62 votes he was the major part, and carried what he liked, for their will not be 62 perſones in the company beſides theſſe. This was thought ane very extraordinary way of doing busines; only they who have put in moſt ſtock into the ſociety ought in reaſon to have the greateſt ſhare in the governement and administration of it. By the reſult of the compts, it was found they would get double their annuelrent for the laſt year's venture.

Eodem tempore in Decembris 1676.—The King wrot a letter to the A. fol. 269,
No. 517, § 11. Lords of Seſſion anent the ſhip called the Calmer, with Sir Lionel Jenkins, one of the Judges of the Admiralty of England, complaining the Lords ſhould have declared that ſhip prize only because ſome few in the ſhip ware Hollanders; which could not, in law, infect the reſt. This was charged upon John Inglis, and he blamed for informing the Suedes refident and the Colledge of Commerce at Stockholme. The Lords wrot a vindication of themſelvēs in that affair, and a defence of our custome for not-publication of the testimonies of the witnessēs wheirupon it was adjudged and found prize: tho it was alledged this concealment was only uſed in Courts of æquity in other parts of the world, wheir the parties get not leive to hear the witnessēs depositions; but in all Courts of law, (ſuch as is the Seſſion,) all the world over, the depositions of the witnessēs are patent, and are ſo with us: for their be few parties and their advocates but *vitis et*

modis they get a fight of the testimonies. It would seeme this apologie hes not satissified; for the King, notwithstanding theirof, by his letter in Aprill 1677, hes called for the depositions and haill minutes of that proces to be transmitten to him: and ordains the parties concerned to attend him at Whitehall: and John Cunyghame of Entirken, the King's wryter, raised the summonds for that effect, being of a new stile, and unheard of before: Which is a most extraordinary act, and astonished all: for, besydes that it may be used as ane argument of our dependence on England, all other processses may, on misrepresentation, be remanded to Court, and revised and recanvassed their. So it is a sore wipe upon the Lords, as suspect of great injustice, and is by the most knowing persones called 20 tymes worse than Almond's appell from them to the Parliament, or the Advocates addresse.

But, in the beginning of June 1677, his Majesty being better informed, wryts doun a new letter to the Lords, retracting the former, and declar- ing the decisions of the Seffion shall be ultimat and definitive, &c. Yet see the treaty marine betuen our King and the French in February, 1677, article 12: it's hard to make the King contradict himselfe in a moneth's tyme.

A. fol. 298,
No. 627.

27 Julij 1677.—The case of the Calmer ship (*de quo vide supra num. 517, § 11,*) being again debate this day, the Lords, of new, adjudged that ship and found it prize: And the President tartly rebuked John Inglis for blowing up the poor strangers, and making them beleeve the Lords had done them open and manifest iniquity and injustice, and ather understood not or decerned not conforme to the Law of nations. But, on the 31 of Jully, Jo. Inglis having obtained a new hearing, they sustained this defence, relevant to liberat and free that Calmer ship; that Secretarie Coventrie had a power to fraught the ships ather of enne- mies, or allies, or neutralls, for his Majestie's service; and that this ship was one which was accordingly so fraughted by him. And upon this knack, in a trace, did the Lords retract 4 consecutive sentences of their oun finding it prize; and they now declared it free, for it was generally opined to be a free ship. Some thought Lauderdale influenced this change. Their was much debate in this cause from the Law of nations.

A. fol. 319,
No. 724.

7 Februarij 1678.—This day the Lords, of new, advised the affair of

that prize ship called the Calmer; and because of John Inglis, advocat, his passion in this action, anagrammatized the clamor: and found the alledgeance of competent and omitted was *juris positivi* and municipall, and so extended not to strangers; but that the alledgeance of proponed and repelled was *alterius fori*, and touched the soverainety of the Courts, and would meet strangers as weell as others. And to knock the haill businesse on the head by the overruling power of the King's letter, impetrat by the Suedes embassador, and complaining of the Lords procedor in the matter,—for their ware 4 consecutive decreets finding it prize,—they indirectly reversed all they had done, and took it quite of the fyle, and found it a free ship, unless Souton the master of it should depone upon oath that it belonged to Holland. Now, Souton was clear to depone the contrarie; and this did so order the probation, that if Souton had dyed *medio tempore*, the ship would have been simply free.

13 Decembris 1676.—Mr. Richard Maitland, minister at Nig, pershues A. fol. 270,
Sir Jo. Forbes of Monymusk, Meinzies of Pitfodells, &c., his parishioners, No. 523.
before the Commission for Kirks, for ane augmentation of his stipend the lenth of the A&t of Parl.; they say the Bishop of Abirdeen had ordered all the ministers in his diocese whosse stipends ware under 8 chalders of wi&uall to pershue to get them made up. Amongs fundry defences, (which sie in the Information) this was one that Monymusk's teynds could not be affe&ted or burdened with any augmentation, because he had bought his teynds and obtained them on the resignation of the Marquis of Hamilton (who was Lord of erection of the Abbey of Arbroath, to which thir teinds belonged,) in 1618, hæretably disponed to him *cum decimis inclusis*, and theirfor, having so onerously acquired them, they could not be clogged or destined so long as their was other free teinds unbought and not in so favorable a case in the parish. 2^{do}, They could not be affe&ted at all, because we offered to prove that the lands of Monymusk, stock and teind, was ane ecclesiastical few of the abbacy of Aberbrothick, (to which religious house they ware vowed by King David, that fair sanct to the croun, when he went against Donald of the Isles, if he should returne prosperous,) who being monks of the Cistercian order, their teynds, both

by the canon law, *cap. 10 et 34, extra de decimis*, and our law, (. . . .) are declared free of all burden. If that cloiftare ware Cistercians I cannot tell; some say in their foundation they are so called, but in the list I have of all the Monasteries in Scotland, they are called *Turonenses* or *Tironenses, quasi tirones, novitij*. (See Ross's View of all religions.) But if their be no other teynds, it ware hard on this to defraud the church of that which is naturally her patrimony, as the teinds are called, A&t 10, Parl. 1567, but if their be any other teynds, they should be free and exeeded.

I find now Arbroath was a convent of Benedictin monks, from the chartors of Torrie; see a compend of them. They are called *Turonenses* from the Benedictin abbey of Marmoustier at Tours.

A. fol. 290,
No. 586.

26 Junij 1677.—In the action pershuied before the Commission for the plantation of Kirks, at the instance of Mr. Richard Maitland, minister of Nig, against Monymusk and others, for ane augmentation of his stipend, I alledged it was none of the best characters of a minister to endanger Christian charity and the breach of that spirituall union between him and his flock, for 100 marks more stipend; that augmentations and prorogations ware *correlata*, went *pari passu, uno posito, ponitur et alterum sublatio uno tollitur et alterum*; that they ware like thing and it's price, and theirfor, wheir prorogation could not take place, nather could ane augmentation, because they could not remunerat nor recompence; but heir no prorogation was praestable, because they had the heretable and perpetuall right of their teynd,—*ergo*, they could not be burdened with ane augmentation. 2^{do}, *Decimæ inclusæ*, by the law of Scotland, have ever been freed from all burden of stipend, because they are not repute to be teinds, but a part of the stock; see Craig, pag. 102, who calls them *decimas garbales*, tho that word also signifies personage teinds; see Stair's Systeme, *titulo* of teynds, § . And, for proving the alledgeance, I produced a chartor granted by the Abbot and Convent of Arbroath in 1544, granting *feudum perpetuum decimarum garbalium* of the halfe lands of Torrie; (see a summary of the said chartor in another manuscript.) Pitfoddells produced for proving that his teynds ware included also, a chartor both of stock and teynd, wheirin his teynds ware expresly designed *decimæ inclusæ*.

Alledged 1°, against Monymusk's chartor, that it did not prove his teynds to be truely *decimæ inclusæ*, which are only such as ware *nunquam antea a solo separatae*, and are presumed to have been fewed out before the Councell of Lateran, but Monymusk's ware not such, for in the narrative it was confess they had been formerly under tack, *quæ locari prius solitæ sunt*. Nixt, they ware actually separat from the stock, in so far as he had a separat chartor for them. 3^{to}, They ware not designed *inclusæ*, but only *garbales*. 4^{to}, They ware separat, in so far as they payed a distin& *reddendo* and duety, viz. 28 bolts of wi&tuall for them, which was ane evident demonstration that they had been seperatly valued; and their was no other obje&tion against Pitfoddell's chartor, *cum decimis inclusis*, for evincing that his teynds ware not truly of the nature of thesse *decimæ inclusæ*, to which the law hath given such a speciaall priviledge and exemption, but only this laft: Monymusk's chartor lay open to all the forsaid exceptions.

After many reasonings, the Commission, on the 25 of July 1677, gave him 270 mks. of augmentation, and imposed it all upon Monymusk and Kirkhill, conforme to their rentalls in proces, viz. 250 mks. *per annum* on Monymusk, and 30 mks. yeirly on Kirkhill, reserving alwayes to discusse the point of right before the Judge Ordinar, (*id est*, the Lords of Session,) at the discussing wheirof, if it appear that Pitfoddell's right to his teinds is not truely of the nature of *decimæ inclusæ*, then he is to releive them *pro tanto*, and to bear a proportionall part of the augmentation, conforme to the rentall of his lands in that parish, produced in proces. This was a strange and extraordinar reservation, and refle&tet extreemly on the knowledge of the members of the Commission, as not of that reach to determine what ware truely *decimæ inclusæ* and what not, as the 15 Lords can. It was the President's cue to fugillat the Bischops, and to cut Commisar Monro, its clerk, short of all the benefit he could; and he feimed, in his own opinion, not to be convinced ather that Pitfoddell's chartor did truely containe *decimas inclusas*. It is not usuall to bring decreets of the Commission to be re-canvast before the Session, tho this is rather a reference of a hard kernell in law to them that are most used in breaking them: Yet I remember on

the 27 of Januar 1670, (*vide supra, num. 111,*) Mckeinzie *contra* Mck., Goffurd sustained himselfe judge competent to a redution of a decree of the Lords of the Plat for Kirks, tho the Advocat declined it. The truth is, it being a Committee of Parliament, is at leist co-ordinat with the Seffion; see Mck.'s Criminalls, part 2^d, tit. 3, of the Jurisdiction of the Parliament, pag. 366. Their are no *decimæ inclusæ* with us, but such as ware so possest and holden and repute before the 29 A&t in 1587, annexing all the kirklands to the crown. As for the rights of kirklands granted after March 1558, (because then the Reformation prævailling, churchmen did willfully dilapidate their rents and benefices,) they are null, *ipso jure*, by the 88 A&t Parl. 1564, unlesse they ware confirmed by the King, who came in place of the Pope; see Craig, Feud. pag. 108. In prosecution of the forsaid reservation, Monymusk hes raised his proces of Declarator before the Seffion against Pitfoddells, for bearing a proportionall part of the augmentation, his teynds not being the privileged *decimæ inclusæ*. See the 12 of Jully 1678 (it is pag. 18) wheir it's decided they are not *inclusæ*.

A. fol. 271,
No. 524.

About this tyme, in December, [Robert] Baillie of Jerefwood, and Androw Stevinson merchand, ware imprisoned and fined in 500 lb. sterlinc, for aiding the escape of Mr. Kirkton, ane outlawed minister, and brother-in-law to Jerefwood, out of the hands of Captain Carstairs, who was apprehending him, and since is in a great remorse and anguish of spirit for it.

My Lo. Lauderdale, to engratiate himselfe, caused Jerefwood's fyne to be remitted to him in September 1677.

A. fol. 271,
No. 525.

20 Decembris 1676.—This day the three M'Gibbons ware condemned in the Criminall Court to be hang'd, and ware put up in chains betuen Leith and Edinburgh, for robbing the Laird of Lawers in his oun house; he cheated them and cullied them by a forg'd remission, which was scarce *pia fraus*; only it was thought, such robbers and enemies to mankind and humane society deserved to be hunted and caught, as we doe with wild beasts, by netts and all means, *per fas vel nefas*.

4^o Januarij 1677.—Wheir deprædations are made by the Hielanders, A. fol. 272,
 (for whom the clans are caution,) if intimation be duely made at such and
 such places by a notar, and instruments, then Major Grant and the heads
 of the clans are bound to refound the damage; and his pension furth of
 the Tresurie, for keeping thesse countries peaceable, may be arrested for
 the same, tho commonly pensions are not arrestable.

Eodem tempore.—The Lords at this time, by their A&t, renewed that A. fol. 272,
 part of the A&t of Parliament and regulations about the calling of the
 roll, and what is not brought to ane A&t or Decreet to-day, that it be
 marked and called to-morrow; and in caise the pershuar infist not the
 2^d tyme, then to delet it; and not to be heard again, till it be of new en-
 rolled, and come in behind all that is before it in the book of enrolment:
 By which rule, if observed, they sweep clean before them. But it was
 made for the weak Lords; because many pershuars shun'd to infist before
 them. *Vide* this renewed 1^o Novembris 1677, numero 644.

Eodem tempore.—Sir Andrew Birny and some of the Conformist A. fol. 272, b.
 Advocats having made ane A&¹ to seclude noblemen and all other No. 530.
 persones whatsoever from entring unto the Advocats their roume and
 walk: much ombrage and discontent was tane theirat, as I have marked
 in my Session occurrents, 2^d Januarij 1677. The Earles of Dalhouffie,
 Home, &c., with the Lord Forrester, came one day and required leave
 to enter, and the keeper refusing, they took instruments in the hands
 of 2 notars they had brought with them; wheiron they gave in a com-
 plaint to the Secret Councell, founded on their peerage, and that they
 had ever been in possession of it, and that their busines might suffer
 else. The Secret Councell, after some heat, referr'd it to the Session,
 who called the parties nixt day. Sir G. Mck[einzie] alledged, they
 ware so crowded with throngs, that it was the liedges interest not to come
 in, and disturb thosse who ware met there only to doe their busines; and

¹ The reason of this Act was, because they drew up only with the late entred Advocates and discountenanced the Conformist ones, for which cause the President, &c., caused make the said Act for excluding them.

that he had seen the E[arle] of Craufurd kept at the door; and that during Sir G. Lockhart's oun government there was ane A&t for seclusion of all but Advocats made. Sir G. answer'd, Their was no such A&t in the Books, nor could be shown. Mckeinzie replied, It was a part of his arbitrary tyranny, if it was not recorded. This, and some other harsh expressions, Mr. George Bannerman resenting, attended Sir G. Mckeinzie at 12 a cloak that day and gave him a challenge; wheirof the President and some other Lords being informed, they put them both under arrest, and next day citing them before them, caused them find caution to keep the peace, under the pain of 10,000 mks., and proffer'd them a bond to be subscryved for that effect; which Mr. G[eorge] B[an-nerman] refusing, was ordered to prison, but was only attended by a maister till 6 a cloak at night, at which time he engadged.

The Lords fell upon fundry modells of the Utter-house to please the Lords and others; but it was to no purpose.

A. fol. 272,
No. 531.

Eodem tempore.—Bailzie Charteris about this tyme emprison'd Mr. Thomas Baird in the Tolbooth of Edinburgh, wheirupon a great complaint was made by the Advocats. See the storie of it, and about the priviledges of Advocats, and anent the Toune's officers poinding a silver dish from George Stewart, advocat, for not paying annuity, &c., in my manuscript containing the Occurrents emerging in the Session, pag. 4, &c.

A. fol. 273,
No. 535.

24 Januarij 1677.—This day, the case of the Tortoise ship was debate betwixt the King's frigat and a Scots caper: This ship being first discovered by the King's frigat, and so disenabled by its canon that it could not have escaped,—in come other 2 Dutch ships to rescue and bring it off; the King's ship being engadged in discussing of them, Captain Ranken, commander of a Scots privateer, comes in upon it's play, and seizes upon the Tortoise, and carries it away. The King's Advocat, &c., raise a Declarator that the ship belong'd to his Majestie's frigat, because it having chassed away the other 2 ships, nothing could have hindred her from becoming master of the Tortoise, that lay exposed to mercy, unable to resist, unable to flee, unfit to fail.—Alledged for the Scots privateer, that

such things are *primi occupantis*; that the case is already determined by the Emperor Justinian, in § 13, *Instit. De rerum divisione, et acquirendo rerum dominio*, in the parallell of a wild beast that one hath wounded so as it can hardly easily escape, and he is in prosecution of it, another, nearer hand it than he, first apprehends it:—Trebatus thought the first was *dominus*: but the law sayes it becomes *eius qui cuperit, quia multa accidere possunt ut eum non capiat, multa inter calicem supremaque labra*; and the other is only guilty of incivility, and may be fyned theirfor, but the propertie is transmitted to the taker.

The Lords first before answer took tryall if the said ship was so embezilled that it could not have escaped the man-of-war.

The Lords having advised the debate on the 15 of February 1677, preferr'd the Scots privateer to the King, to give a demonstration of their æquity that they durst determine against the King. This was done *valde reclamante Praefide*, for Sir James Stanfield's sake.

About this tyme [25 Januarij 1677], Sir Patrick Nisbet of Dean being A. fol. 274,
conveen'd before the Criminall Court by the Laird of Humby (Hepburne,) No. 538, § 9.
for perjuring himselfe in 2 contrarie oaths, the King's Advocat advyfed his
coufin S. Pat. to give Humby 4000 mks. to get a discharge of the proces,
and up the depositions to be cancelled. Halton getting notice of this collu-
tive transaction, to shew his earnestnes to inrich the fisk, sent notice to the
clerk to keep up the depositions, for he would cause it to be pershued;
secundum senatus consultum Turpilianum. The same being lent up to,
(and, as some say, destroyed by) Alexander Nisbet of Craigintinny upon
his receipt to redeliver, Halton was so violent that he caused imprison-
Craigintinny for sundry weeks, till he obtain'd a charge to set at liberty,
with ane oblidgement to enter himselfe the first of June, if required.
Perjurie is not to be præsumed *in re minima et post aliquid temporis*
intervallum, man's memorie being labile.. Some advyfed Sir Patrick
to raise a præcognition before the Councell, who are usfully favourable
to the pannell; but præcognitions use only to be in cases of slaughter, and
not of menswearing; for witnessses are onlie tane in præcognitions, wheiras
in this perjurie the probation was only by wryt.

A. fol. 275, No. 544. 8^{vo} Februarij 1677.—William Hamilton, Deacon Conveiner of the Trades of Edinburgh, got Nicoll Somervell, clerk to the Magdalen Chappell meeting, deprived for malversation and other trinqueting ; who, complaining of it at Secret Councell, was their found guilty, fyn'd, and imprisoned. (See the Information of it.)

A. fol. 275, No. 546. 15 Februar 1677.—This day Sir Alexander Forbes of Tolquhon was fin'd in Councell in 10,000 m^{ks}. for giving Mr. John Strauchan his minister a cuff, and sent to prisone till he pay'd it, as also to pay 500 m^{ks}. to the minister, and 4 dollars to every witnesse who came over. This was only done to pay a bond of the like summe which he had of my Lord Elphinston, who has got a right to the fine.

On the 10 of August 1677, the Secret Councell set him at liberty, upon caution to re-enter when demanded.

A. fol. 275, No. 548. 20 Februarij 1677.—This day the Earle of Rothes, Chancellor, (Sir W^m Bruce's name is in the gift of non-entrie,) gain'd his action against my Lord Melvill and his 2^d sone ; the Lords found Melvill's sone could not be served air of tailzie to the last Countes of Leven during the possibility of a 2^d sone of my Lord Chancelor's body, (for the devill most byde his day,) and præfers Sir W^m Bruce's gift. Theirafter, on the 26 of Februar, on a bill given in by Melvill, and a debate following theiron, representing that they could not præfer Sir W^m's gift, since their was not a *verus contradictor in campo*, without which the proces would be utterly null and void : Melvill was not, for he was no member of the tailzie : his sone was minor, and might say next day his father had colluded, and so *res inter alios acta* could not præjudge him. The Chancelor had tane much pains to have out his decreet extracted (the 24 howers after the reading in the minut book, and 12 howers after the giving out of the scroll to the adverse party, being past) before this bill came in, but Mr. Alex^r Gibsone, clerk, with much rudenes and passion refused it ; undoubtedly he was authorized so to doe by the President, else one so timorous as he, had not done it. However, the Lords this day take back what they gave ; and some of them who ware clear for him the tyme before, as Argyle, &c.,

change on him ; Halton stood firme to him. The Lords resolved to leive a buckle louse for overawing him and keeping him quiet betwixt and June. They reserved alwayes to debate upon the gifts in the special Declarator, (which they minded to intent before the shireffs, wheir the lands lye,) whither it be a non-entry in the king's hands, or if it be lying in *hæreditate jacente*, which is a most ridiculous fancy, their being no *hæreditas jacens* knownen by the law of Scotland, but in favors of creditors when appearand airs renonces, and their is none in the feudall law, wheir the king most alwayes have a vassel. He was forced to take his decret with this clog at the taill of it, and extract it with that quality, because they would not give it him otherwayes. They aime^t at a sequestration of the rents in a second partie's hands during the dependance and possibility of a second sone, and Melvill's second sones exclusion.

On the Chancelor's interlocutor their was a roundell made :

Ens Reale (*id est* Melvill's 2^d sone) craves to be præferr'd ;
Ad quantum et ad quale, Ens Reale.
But I (*id est* the Chancellor) say Nihil tale
Until I be interr'd
Ens Reale craves for to be serv'd.

As to the originall of tailzies in Scotland, with clauses irritant incaise of contra&ting of debts, or not taking the name, &c., they are very late, the first of them are within thesse 60 or 70 years : what was first in Scotland was the laird of Calderwood's tailzie of his lands, advised by Sir Thomas Hope, then their was on Duncan's, then their was Thomas Moodie's, as to the lands of Sauchtonhall, and then the Wicount of Stor-mont's, as to the estate of Annandale, and many since, tho the President in his systeme hes declared himselfe no friend to such clauses. In the tailzie of the Dukedom of Hamilton it's provided, that all the succeffors shall be of the Protestant religion ; and if they forsake, then, by ane irritant clause, the estate shall devolve and deschend to the nixt in blood : it likewayes bears, that none of them shall ever bear armes against the King or his authority, but shall ever affift him in all his wars, under

omission of the few. *Queritur*, if thir clauses ware insert by themselves or the King? I hear of rare clauses insert in Ro. Macgill, Lord Foord, his chartors of resignation, bearing a legend of his life. See some of his wrytings and collections, *apud me*.

A. fol. 277,
No. 550, § 4. 23 Feb. 1677.—The Lady Marquis of Dowglas obtained at Secret Councell modified to hir 2000 mks., for aliment till the first of June, since shee did not cohabit with her Lord, in respect of some differences betuixt them. About the same tyme, one Isobell Haddoway gave in a bill to the Lords of Session against Maccubi, merchand in Edinburgh, her husband, complaining that he keepeed not his oun house, and yet gave her no competency to live upon, &c. The Lords ordained him to be cited by a maister, and referred it to Castlehill to hear them; who agreed them togither.

A. fol. 277,
No. 550, § 5. This Winter, at the toune of Abernethy, happened ane accident that gave much occasion of talk; viz. a fletcher being drinking their with ane other countrie man in ane alehouse, and falling at wariance, the fletcher sticked the other. Their ware some neibouring gentlemen drinking in the nixt roume, who upon the noice being invited to enter, took him in the very a&t; and, being astonish't with the cruelty and warm'd with drink, they make themselves the immediate avengers of the blood, and leads him out to the regality gallows, and causes hang him theiron, albeit they ware nather shirefs, bailzies of regalitie, nor wested with any other publict capacity, but the notoriety of the fa&t, and zeall, did burne them up. *Queritur*,—Seing this was ane a&t of materiall justice if the omission of punctilios of forme, of exercing and usurping and assuming the sword of the magistrat in a clear case be a punishable cryme? Yet I find Ludovicus Pontanus, *de urbe Roma singulari* 747, assert that *occidens illum qui jure erat occidendum tamen capitaliter punitur, v. g. to kill one that's going to the place of execution.*

A. fol. 277,
No. 550, § 6. About this same tyme, we had a relation about the Captain of Clannald's ladie, a cousin to the Earle of Seaforth, that being Roman Catholic, and finding hirslef indisposed, shee defyred one Pere Whyte

might be sent for from Invernes to confess hir; which hir husband, tho Protestant, assented to. This father, after some stay, prævailled so far that he had debauch't hir, and the Captain, having one day gone to hunting and returning suddenly to bring something he had forgot, surprized them together in some unchaste posture; wheiron he immediatly caused lead out the Priest to his utter gate, and hing him over it, and sent hir some dayes journey into the Hylands, with expresse inhibition not to returne. Mck. in his Plaidoiez, pag. 196, affirmes that the Roman law allows to kill a wife taken in the act of adulterie; but see the restrictions of it *in margine. Justum dolorem temperare difficile est.*

All this Winter, and in 1677, we ware alarumed with strange passages A. fol. 277,
anent the west-countrye Witches, besyde Pollock's (Maxwell's) house, whom b. No. 551.
they rosted by a lent fyre,¹ with images of wax and clay formed by the devill, and who at last dyed of that fweiting sicknes. See the depositions and confessions of thesse Witches in a paper besyde me.²

But what struckt all with admiration was the manner of the discoverie, by a dumb girle scarce 13, who led them wheir the pictures were, who heard and understood, not only Scots, but all other languages, and answered by signes and appositly; who prævaricated as to hir name (Jonet Douglas) and place of birth, so that none could know whence shee came; who at length spake, and told, shee had all the things shee knew revealled to hir in hir sleep by vision; and that it could not be from any delusion of Satan, for else his kingdome should be devided against it's selfe, and our Saviour's argu-

¹ See the story of Duffus, King of Scots, so rosted, in Buchanan, pag. 184.

² The probation of no cryme is more obscure and difficult, and more removed from the apprehension of our sence and understanding, then this of witchcraft. (See the treatise besyde me against the common receaved tenents of witchcraft. See Mck.'s plaidings for *Mervia* accused of witchcraft, pag. 185 and 196, *et seq.*) For the matter of spirits being so dark, being invisible, since *nihil est in intellectu quod non prius fuit in sensu*, and that our very soull, a spirituall substance, has no reflex act upon it selfe, and we know not what it is; what can we be assured of thesse apparitions of spirits, witches, and of the improbable and impossible things they doe, to be other then the reveries of a disturbed brain, extorted oft tymes? and many innocent persons have suffered in this point of conjecture and divination.

ment should not be concluding. But what made hir very suspect to be hanted only by a familiar, was hir dissolute idle life, having nothing of austerity, and not so much as a shew or semblance of piety in it, but much lightnes and vanity, so that many concluded hir to be a very cheat: And accordingly the Secret Councell ishued furth a warrand, in May 1677, to apprehend hir wheirever shee should be found, in Glasgow or Paisley, &c., and put hir in cloffe prison: for if hir knowledge be so strange as it's reported to be, it's just shee tell whence shee hes it; but if it be a unvoluntar posseſſion, or by a spirit's frequenting of hir, or by the second sight without a paction, it can never be made criminall: it's her miffortune, to be prayed and fasted against, but not her guilt, no more than ane infant or madman are punished; *nam satis ipso furore punitur, fayes the law.*¹

John Stewart's fister, the maid witch amongs them, about the age of 14, albeit pænitent and confessing, yet, throw pity, was, by order from the Secret Councell, repreived from burning.

Nather most the West alone be fertile in witches, but Haddington, in Eift Louthian, most also give harbor to such unhappy creatures. Their is one Margaret Kirkwood in Haddington that hangs hir selfe; some say shee was so strangled by the devill and witches. The same happened in

¹ In June 1677, the Secret Councell caused bring in the dumb lasse, now speaking, calling hir selfe Jonet Douglas, (but shee lyed as to hir parentage,) to the Canogate Tolbuith, wher I spoke with hir. Ere shee came from the West, shee had discovered 5 or 6 mo witches, who had made the picture of Hamilton of Barnes, and wheirof he dyed: They ware burnt at Dum-barton. (See it *infra, numero 573.*) The first night shee came to the Canogate, C. Charteris, one of the toune bailzies, shee told him his wife was witch't by 2 old weemen in the Castle Hill, and condescended on them, and they ware imprisoned, and denied. Shee desired them to repeat the Lord's Prayer: They did, before 2 ministers and others, who observed no alteration; the lassie bad them advert, for they said not "Our Father which art in Heaven," *in presenti*; but "which wart," applying it to Satan; by the same rule, they should turne the following, "thy will be done," from "as it is," to "as it was in Heaven," which I know not if they did: but this is very incredible and fallacious. All ran to hir, till the Councell discharged any to have accesce, finding her ane impostor and cheat, at leist poseest, or having the 2^d sight, or revealed to hir in the air, (as was reported of Major Weir, see it *alibi*,) or in hir sleep. The Councell ordained hir to be banish't the King's dominions, and transported in some ship. But their is no master can be yet persuaded to take hir with them, they are so fear'd; and some choice rather to hazard away without a passe as to goe in such bad company, as they think,

a Sunday in the forenoon ;—she has a serving woman in the church, called Elisabeth Moodie, who makes some disturbance and noice during the sermon, and numbers till shee reach 59, which was hir mistresses age, and then cryes the “ turne was done ;” which was found to be the very instant in which hir mistresse was making away hir selfe. Upon this, being apprehended and examined, shee denied till shee was searched and pricked ; and, after the alledged marques were found upon hir, shee confessed hir selfe to be a witch, and the particular circumstances of it, as I heard hir acknowledge them. She was burnt for it in the beginning of June 1677. The said Margaret Kirkwood, who hang'd hir selfe, being wealthie, their ware severalls who put in for the gift of hir escheat ; amongs others the Toune of Haddington, not only upon the account that they ware shireffs within them selfes, (which I think is not eneugh to give them right to the escheats of such as put violent hands in their oun life within their bounds, else the Toune of Edinburgh should have it, who, by ane old priviledge and clause in their chartors had right to the escheats of all who committed slaughter within their brugh, but ware forced to quite it in their chartor 1636;) but because the toune of Haddington hes a particular clause in their chartor of erection exēiming them from the shireff's jurisdiction, by which they are in the present use and possession of repledging their burgesses from the shireff. And thosse who have read the toune of Dumbar's chartor, procured to them from K. James the 6^t by Sir George Home, Earle of Dumbar, say it bears a farder clause, viz. *inhibemus omnibus judicibus nostris eos quovis modo molestare*,—none of which would be sufficient to give them right to the escheat goods of the said woman, *quaे mortem fibi conscivit*, (for Edinburgh pretends not the gift and priviledge as to such escheats,) but they affirme the chartor of Haddington has a farder clause in it, viz. with power to the magistrates theirof to judge *de furto aliisque criminibus*, (under which they would draw *felo de se*,) *et æschatum pro ijs capiendi et ad proprios suos usus convertendi*; and theirfor they thought it a quæstioning their right, to seek the gift of it from the Exchequer.

That miserable bodie Lifie Mudie, who confess hir selfe to be a witch, did also delate 5 other weemen in the toune of Haddington, (two of them

midwives,) and a man, as guilty of the same willanie ; and, being confronted with them, I saw hir constantly (tho some, without any ground, alledged shee was hypocondriack,) abide at hir delation, and bind them with particular tokens and circumstances, but they denied all. I did see the man's bodie search't and prick't in 2 fundrie places, one at the ribs, and the other in his shoulder ; he seem'd to find pain, but no blood followed, tho the pins were the lenth of one's finger, and one of them was thrust in to the head : the marks ware blewish, very small, and had no protuberancy above the skin.¹

I remained very unclear and dissatisfied with this way of triall, as most fallacious ; and the fellow could give me no accompt of the principles of his art, but seemed to be a drunken foolish rogue. I find no judicious lawyer laying anie weight upon this marque, (which they call *Sagarum stigma*,) farder then *levis conjectura et præsumptio, unde procedi potest ad inquisitionem ; ad torturam vero non* ; (and their is no doubt but their methods of keeping them from sleep, and pricking, are a torture *in suo genere*, which no Judge can infli&t but the Secret Councell and Criminall Lords.) See *Martinus del Rio Disquisitionum magicarum, libro 2, in quæstione 21, pag. 198*, wheir he sayes, in thosse marks their is nather pain nor blood ; again, *libro 5^o, sectione 4^o, pag. 726*, he shows the severall figures of it ; and that he gives not the nip to witches of quality ; and sometymes when they are apprehended he delets it, and that it will be in their eye brows, their mouth, their nostrills, and in weemens privities, and that all thesse marks are not void of pains, and when they find them selfes prick't they may easilly feigne paine that they find not. *De purgatione seu proba per aquam*, see him refute it largely, pag. . The most part of the creatures that are thus deluded, by this grand impostor and ennemy of mankind, are of the meaneft rank, and are ather seduced by malice, poverty, ignorance, or covetousnes : and it's the unspeakable mercy and providence of our good God, that that poor devill hes

¹ The pricker said their ware 3 sorts of witches marks : the horne mark, it was very hard ; the breist mark, it was little ; and the feeling mark, in which they had sence and paine. See Mckeinzie's Criminals, pag. 91. *Vide* September 1678, in another manuscript, pag. 21, *et seqq.* about witches pannelled then and the pricker put in prison.

not the command of money, (tho we say he is master of all the mines and hid treasures in the earth,) else he would debauch the greatest part of the world. (See *Delrio ubi supra, libro 2, quest. 12, pag. 149.*)

24 Februarij 1677.—The Secret Councell, by their A& founded on a letter from the King, (see the A& of Councell,) divided Scotland in 3 districts, as to the granting of passes to all ships going abroad ; which was a considerable part of the office and profit essentially annex'd to the Judge Admirall and his clerk, and yet most be disjoyn'd, because Mr. Hew Dalrymple, the President's 3^d sonne, was to be sharer of the benefit. The first was to the toun of Edinburgh, for all the sea ports betuen the Mule of Galloway and Abirdeen ; the 2^d from Abirdeen to Orkney ; the 3^d for Orkney and Shetland. See this annulled, 6^{to} May 1680, in another Manuscript, page 143.

Eodem tempore.—The Shireff's fiars are mainly sett for this designe, to regulate the prices of undelivered bolls by the tennent to their master, to make them liable in that price. Yet some masters doe, by A& of Court, bind their tennents in payment of hyer prices than the fiars, in caise of failzie of delivery, as 20 shilling more *nomine paenæ*. The Exchequer fialls are sett for the King's waffals who pay in their few-dueties to them as the King's commissioners, (and if it be within x ^{lib}, to the Shireff,) by the regulations of Exchequer made in 1672 : their prices are usufully set very easie ; just as the toun of Edinburgh commonly dealls with their waffalls. This year, 1677, the wheat payed into the Exchequer is estimat to 5 lb. the boll, the bear to 4 lb., and the oats to 3.

1 Martij 1677.—Trotter, Lady Craigleith, was fined at Secret Counsell in 6000 mks. for conveying away hir daughter, aireffe of Craigleith, after the Councell had ordain'd hir to be sequestrat in the Bishop of Edinburgh's house, and sending hir to Berwick, wheir shee married young Prestongrange, (Morison,) and stayed some 2 or 3 moneths, till shee compleited hir 12 years of age, after which the marriage could not be dissolved, nor shee refile. *Pietas materna et naturalis* might have said

much to have defended the mother in what shee did: But what made it a guilt was, that Mr. James Rochied being hir uncle, had offered hir to Halton's 2^d or 3^d sone. Hir maternall unckle, Mortonhall, was fyn'd for his accession in 3000 mks., and young Prestongrange in 1000 merks, being the mul& imposed upon such of his quality by the [34th] A& of Parliament 1661, against clandestine marriages. Many obserued the concurrence of this hard sentence of 10,000 mks. amongs them, and sending them to prison till it should be payed, with Mr. James Rocheid's daughter hir running away this same night with Francis Cathcart.

Fol. 279,
No. 557.

Eodem die.—Alexander Milne, late Provest of Lithgow, was imprison'd by the Councell's orders, and fyned in 500 mks., for committing a ryot in poinding on a decret or bond after a past suspenſion was intimat to him.

Fol. 279, b.
No. 558.

6th Martij 1677.—James Campbell, Provest, and the rest of the Magistrats of Glasgow, ware fyn'd by the Secret Councell in 10,000 mks., for suffering 2 conventiculars, who ware imprisoned in the tolbooth, to escape, albeit they showed how the Jaylor's wife was bled and strucken in refisting them, since their prison should have been better keipt, and more securely, than by a woman. They reserved alwayes releiff to the Toune of Glasgow against the parties, who ware responſall eneugh. This was 30,000 mks. in 2 moneths space for 3 fyndes, Tolquhon's, Craigleith's, and this. They say my Lord Rosse got the gift of Glasgow's fine, and compon'd it. Mr. James Rocheid got 9000 mks. of his good-fister and hir brother's fyne; and my Lord Elphinston got that of Tolquhon's, being his debtor in 6000 mks. before; so the King's Exchequer was litle enriched, with much outcry against the Councell.

A. fol. 279,
No. 559.

Eodem tempore.—He who assumed the title of Earle of Caithnes, as neireſt contingent in blood, was, by a proclamation, inhibited to take the ſaid ſtyle, or the liedges to give it him, on this pretence, that both the estate, honor, and dignity ware resigned in the King's hands in the laſt Earle's tyme. And tho ſome doubt of the refiſing of honors, yet Sir

George Lockhart thinks a man may, in prejudice of his airs, refigne the very title, and surrender and abandon it, *ad perpetuam remanentiam*, in the King's hands, which will extinguish it, and consolidat it with the fountain of honor: for our fews are *feuda conditionata*, not the *feuda gentilitia ex pacto et providentia* mentioned in the feudall law, wheir a man could not refigne or abandon the fee without the advice and consent *proximorum agnatorum*; and if he had done it, they had *jus retractus* within such a tyme; (see *Craig de jure protimeseos*.) With us a man in *lidge pouystie* may prejudge his airs, and give it to strangers; unless it be in waird lands, in the alienation of more than the halfe wheirof he must have the superior's consent, tho not his kinsfolks: And by this same rule, Borrows royall have resigned their freedome and priviledge in Parliament, and so expunged the Rolls: tho it seemes their Magistrats, Commisioner, or other representative, hath lesse free administration of the toune's freedome, than a man hes of his oun title; yet I have seen it done in Cromarty, Enstruther Wester, &c. On the other hand, one may think it hard to hinder the nearest air-maill to take the stile, it having been originally given to that man and his airs, and nothing should deprive him of this his birthright, but a cryme that taynts the blood. And so this Lord Kenmuire being a coufin, and the nearest to the last Lord, took the title and place, without so much as cognoscing himselfe to be the nearest contingent in blood, (which is sometimes done, and makes no passive title,) and yet none quarrells him: It's true to serve and retour himselfe air would bind all the debts on him; and it's a pity that the taking the stile and place should not infer a gestion; it hes been attempted; it would make fewer nobles, but the same behoov'd to extend also to gentlemen, and burgeses taking their father's stile, or entring burges by him. They say Somervell of Drum minds to assume the title of Lord Somervell, as being the nearest; (see Dury 1633, Sir Ja. Douglas of Mordington *contra* the Lord Oliphant.)

In September 1677, Campbell of Glenurchie was created Earle of Caithnesse; and that gentleman who is nearest in blood hes raised a reduction against him of his right to the said title. The nearest agnate's reason of reduction is, that Glenurchie clameth the title and dignitie upon the last

Earle's resignation in the King's hands. Now, the last Earle's right, by which he bruiked the title, was not as air served and retoured, but as a singular successor, who had bought in a comprifing. Now the title of Earle nather was, nor could be comprysed ; and so his resignation (tho he was nearest in blood) could not convey this title ; and the pershuar being served air to a former Earle, he hes the only right to the title. This is somewhat subtil.

Fol. 280,
No. 561.

3rd Aprilis 1677.—Cornelius Neilson, bailzie of Leith, got a reprimande at Secret Councell, being pershued for wrongous imprisonment by one Murray, a merchand in Leith, whom the Marquis of Atholl ouned, and whom B. Neilson had put in prison, because he had with some freedome differed from him about the matter of a legacy, left by a woman cled with a husband, to the kirk session of Leith. He was set at liberty.

Fol. 280,
No. 562.

4th Maij 1677.—Andrew Young, wryter to the signet, was by his Majestie's Privy Council imprisoned for a night, for keeping up a paper from my Lord Dalhouffie, granted to his father, albeit ther was ane accompt owing to A. Young for writings ; which is thought by the Lords of Session to be a good ground of retention, as having a tacit hypothecque. The King's Advocat was much offended at the summarneſſe of the procedor.

A. fol. 280,
No. 563.

8^{vo} Maij 1677.—The Bishop of Edinburgh, upon the representation of the minister of Prestonhauch, issued forth a commission to the ministers of that presbytery, to make a vifitation of the condition of the said church and yard-dike, it being ruinous ; to the effect they might conveene tradesmen, and examine them upon oath, what truely it would take to repair it ; and then to impose the same by the common ftent-roll of paying their other cesses and taxations, conform to their respective rents and intereſts in the parish, upon the gentlemen and heritors parishioners. At the meeting, a vifible neceſſity was ſeen for repairing ; but the method præſcribed in the commission was thought only to be ſubſidiary, in cafe the heritors could not agree amongst themſelves ; for tradesmen will be ready to value high,

on hopes to get the work to themselves ; and, therefore others should be employed besides them who value it.

It was alleged,—The parson by the law was bound to uphold the quire. It was answered,—That holds only when they are in possession of the teynds.—Then alleged,—Some of the most considerable heritors wanted a convenient seat, as, particularly Waughton, whose aisle was remote from the pulpit, and therefore no repairing. Alleged,—If by this delay the winter came on, it would make the reparation much dearer, and therefore the one needed not stop the other.

It was recommended to the heritors to meet amongst themselves, to call for workmen, and setle as easy as they could, for repairing the kirk, and to stent themselves; as also, to accommodate all with seats, and give every one a proportion of the church, less or more, conform to his interest and land in the parish. In some places, they declare all the roume and seats in the church vacant, and then divide.

29 Maij 1677.—This being the day both of his Majesty's birth and happy A. fol. 280,
b. No. 564. Restoration, the Magistrats of Edinburgh, thinking theirby to gain the reputation of loyalty, and to make a parade and muster during the tyme of their administration, resolved to make a solemne and publi& weapon-shawing of the merchand and trades youths, caften in 2 companies, and of the Train'd bands of the toun, confisiting of 16 companies. But being reminded what disturbance the like show did make *in anno* 1666, wheirin a young man was killed, and that by the space of xi years it had bein most justly disfused, for fear of the like disturbance, and that it was but a neidlesse solemnity, accompanied with much danger, and which did put the burgers and youths of the toun to great and superfluous expense ; it being knownen that 5000 lb. sterling did not defray the cost of their apparell the last muster day ; as also, did so fill the prentices and servants heads with vain toyes, that for a moneth or two after they returned not unto joyn, or could not apply their mind to their service again as they ware wont to doe, &c. Thir sober councells could not prevail with the Magistrats to cause them lay of altogether the designe of the weapon-shawing ; only they, for obviating any interfairing and justling betwixt the mer-

chands and trades, for their place or order in marching, did, by A& of Toune Councell, proclaimed by touck of drum, declare that this 29 of May, the merchand youths should only make ane appearance, and discharging any of the trades to muster at this tyme, and promising to bring them furth the nixt year, or when the Magistrats should see it fitt. This, which was designed to quash any contention or uproar, prov'd the very mean of it ; for the trades, being generally discontent that they should be restrained, and the merchands be permitted, began to murmur ; and by their masters privy instigation, the prentices, journeymen, and servants, began openly to tell they would muster too, whither the Magistrats will or not, unlesse the merchand youths be discharged as weell as they ; in which case, if the Magistrats appoint no weapon-shawing that day at all, they are content. The Magistrats, not regarding their grudges, ordaines the merchand youths to draw out themselves on the 20 or 21 of May, and to muster and discipline themselves against the 29 ; and named Campbell, sone to the laird of Cesnock, for their captaine, William Bailzie for lieutenant, and John Falconer for enfigneer ;—and they having accordingly mustered on that day, the trades became enraged theirat, and some of them, to the number of fourscore or 100, especially of the wrights, maiffons, fletchers, and blacksmiths men, came up with cudgells in their hands from the Cannogate, wheir they had been drinking and consulting, thorow all the Hy Street of Edinburgh till they ware at the Castlehill, about 8 a'cloak at night, threatening and boasting any of the merchand youths, if they durst come out and fight them. Befyde the drink that had warmed their blood, the weemen prov'd desperat boutefeuex and encouradgers of them, crying out to them, “ God blesse the trades ! we cannot live without them ; carry yourselves like brave lades. When their is fyre, or any other thing ado in the toune, it's they who do it ; the merchands come rufing in their ribbans, and may weell hinder : we can live weell eneugh without the merchands but not without the trades : And what neids all this pride and distinction ? The trades are as honest men's sones as they ; and he that sells a two-penny horne is a merchand, forsuith ; and he that sells old shoon,” &c. The Magistrats being advertish't of this uproar, sent for a part of the guard, and met them in the coming doune the way at the

Land-marcat, and fell upon them. They resifted fiercely, payed no respect to the Magistrats, but did beat again.¹ At last, after ane hower's dispute and more, they ware all dissipat; some of them wounded, others soundly beaten, and 5 or 6 of them put in prison. This but raised and inflamed their choler. The nixt day, when the drummers ware going throw the toune, intimating that no tradesmen should meet in knots and companies, they fell upon one of them, and broke his drum; and the nixt day, in the afternoon, they met in the King's Park of Halirudhouse, to the number of 1500 or 2000,—for the country flocked to them. The Toune Councell being straitned how to deport, sent two of their Bailzies, viz. Boid and Charteris, to mollify them with soft words: but many judged this a rash attempt in Magistrats, to goe without their oun jurisdiction, wheir they ware no more but private persones, without command, especially having to doe with ane exasperat rable; but it may be it was called a mistake from the unprosperous events. They ware glad of the prize: they presently seize on the two Magistrats, make them prisoners, and thrust them unto a little lodge neir the Eccho; and fall a capitulating, and demand insolent and impertinent things, as is usuall in a confused multitude without leaders, *ubi tot capita, tot sententiae*: only their was one Moffet, a fletcher, a debauch't, cruell, ill-nurter'd fellow, that appeared most active, and assumed a kind of regiment and superiority over the rest. They require the Magistrats to subscribe a paper they cause draw, obliging themselves never to quarrell them for what they had done, and that the Trades shall muster at the weapon-shawing, as weell as the Merchants. Moffet, not pleased with the draught, took it most rudely and tore it, and caused draw another, and the two Bailzies signe it; and leift it should be pretended they did it in captivity, they bring them out of the timber lodge, and cause them doe it in the feilds; and causes them swear they shall never come in the contrare of what they had done, and should cause the other Magistrats ratify it. And as they are conveying them away, and neir the Park dyke, up comes another squadron, and violently haills them back to the

¹ [Interlined.]—They gave Robert Johnstoun, Toune Major, some sore wounds in his head, and they spared not to beat the Magistrats.

place whence they came ; and there they begin with new overtures, and propose that the two Bailzies may send in to the Magistrats in the toune, and cause sett at liberty their 6 prisoners, and get ane obligation under their hand, that they should never quæstion them for this mutinie ; and that the Bailzies behooved to stay till the liberation of their comorads, and the obligation ware returned back : thus, by the space of 3 or 4 howers, did they detain the Bailzies captives. One of their deacons carried in the message, and, to humour them, the persones ware set at freedome, and the bond subscrived. Only Colinton and my Lord Lithgow, as Secret Councillors, with the advice of Provest Binny, Sir George Mckeinzie, and Mr. James Rocheid, deliberat, and send for Major William Cockburne, sous-lieutenant of the King's troup, and commands him furth with a party of 30 horse of the guard, to charge them ; with injunctions to shoot at a distance, and over their heads, and not to kill or hurt any of them, but in caise of absolut necessity. When they saw them coming, they ran to their heells ; yet there was one or two of them mortally wounded, and dyed of their hurts. A woman fitting on the dyke, and crying to the Trades to stand, for there was nothing but pouder in their carabines, one of the guard told hir, he should let hir see the contrare, and shot at hir, and the bullet went throw both hir legs, and shee fell of the wall, and it was said shee dyed some dayes after. Thus, about 7 at night they ware dissipat, and Moffet and some 2 or 3 of them ware taken and laid up in the Cannogate tolbooth.

This allarm'd all the country, and the Magistrats sent over notice of it to Lesly, to my Lord Chancelor. He declared, he should be over on Thurfday the 24 of May, and hold ane extraordinary Councell, to see to the peace and suirty of the good toune. But the Trades did not give over their boasts, and their verie masters and deacons, who fomented them under hand, told, there would be yet worse, if the Magistrats did not condescend to let the Trades youths goe out on the 29 of May, as weell as the Merchands ; and if that ware granted, they should perill their lives and fortunes if the leist croce accident happened : wherupon the Magistrats being frighted, complied so far with their infelicies, and in a manner justified and approved them, that they pittifullly past from all their former acts and proclama-

tions, and consented the Trades youths should muster likewayes ; which was look't upon by some for no a&t of moderation but of fear : they made not so much as a distin&tion or seclusion of such as had been instrumen-tall and ringleaders, ather in the first night's uproar, or in the second dayes tumultuary convocation in the Park ; tho fundrie of them ware weill eneugh knownen by the blae marks and stroaks they had got on their face ; others reputed it as ane affront to the S[ecret] Councell, they hav-ing desired the Councell to interpose, and help them to quash and sup-presse the growing mutiny, and yet anticipated their judgement, and condescended to let the Trades, who ware guilty of the mutiny, appear, and give them the very thing they ware extorting by sedition from them ; so that the Secret Councell ware left as cyphers, the Magistrats having already determin'd the point wheiron they ware to meit, viz., Whither their should be a Weapon-shawing or not ; 2^{do}, If one ware yeelded to, then, If the Trades should be complemented and permitted to rendezvouz as weell as the innocent part of the toune. At the Councell, the Marquis of Atholl, Sir John Nisbet, then King's Advocat, and Abbotshall, ware of opinion that it should be prohibit altogether ; and to pleise the bairnes with ratlers, it was not fit to endanger the peace of the capitall city ; and that the designe of a weapon-shawing was most unnecefstar, might doe mischeiff, could doe no good. The Magistrats, knowing that to dis-charge it was a dounright refle&tion on their conduit, and prudence, and contrivance, delt with great earnestnesse with my Lord Chancelor and other members, (whom they treated and feasted), to give way to it, and offer'd to engage their wholle estate if their should be the leist disorder committed, and brought many of the youths themselves to plead for it ; and the 14 Deacons engadged themselves for their Trades. But this was not security eneugh, every master should have bound caution for his ser-vants and journeymen's good and peaceable deportment under a fine, as the clans in the Hylands are bound for all under them. Wh&ever, the Secret Councell accepted of this as sufficient and reasonable ; and de-clared, if any disorder occurred, the Toune sh&ould be liable. The Magif-trats took it ill that Abbotshall sh&ould have been for discharging it to goe on ; for they understood it as if he only aimed to bafle them in it, tho it

was indeed *tutius* to have followed his advice : however, their was no small heat and debate at Secret Councell about it. The Toune's magistrats having obtain'd their licence ratified at Secret Councell, and having pocketed up the intollerable affront and injury was done to their government and magistracy, and tho all the sober part of the toun defired it might be forborne, since it look't so cloudy, yet they will have it throw ; and so they meet in Toune Councell, and laid doune the method of their marching ; and the Trades, under many of their hands, renonced that pretended priviledge, which was the originall and ryse of that tumult at the Weapon-shawing in 1666, of coming into the toun before the merchand youths, tho they marched out after them ; for the truth is, as the thing ware unreasonable in it selfe, so they never had any such priviledge. For, since the time that weapon-shawings ware first establisched and introduced in Edinburgh, (which was in 1626,) they both marched out laft, and came in laft. And I find, from the Councell Books of Edinburgh, that before Aprill 1626, all the merchands and trades youths ware in one company promiscuously, without distinction ; and this is the overture the tradesmen propose yet, that they may be cast into so many companies, and the æquall halfe to be trades captains, and to have merchand lieutenants, and the other halfe merchand captains and trades lieutenants, without distinction, as is in the 16 companies of the tounsmen who are married ; and so all markes of separation and all animosities may be buried, and the tuo great poles of Edinburgh, wheiron it roulls, the merchands and trades may amicably cement, incorporat, and unite, one with another, as it becomes bretheren and fellow-citizens to doe. But in May and October 1626 I find them, by a^t of Toune Councell, caften unto two companies, the merchand youths in one, and to march on the head of all the companies, nixt to the Magistrats, and the crafts company in the rear ; and ordaines ilk master to be answerable for his prentice, ilk father for his sone, ilk deacon for their craft, and so have the merchand youths ever possest the van, both out and in, ever since. I find by the same books, in 1625, the tounsmen also divided unto 8 companies, 200 men in each companie, that's 1600 ; now there is 16 companies, 100 men in each : the narrative of that a^t largely deduces the great probabilities there was of wars, &c. It is true,

the Trades are by far the more numerous, and they have a great share in the governement of the brugh, they having 18 votes in Councell, for the Merchands 20 ; and their rescuing King James in 1596, in that tumult of the 17 of December, has raised their pride ever since ; yet in all democracies in the world that are weell ordered, the merchand estate are ever more privileged ; and as all tumults, so did this, serve to clear the controverfie, and to deprive them of that which they had been long acclaming, as rebellion quashed ussually raises the soverainety.

As for the solemnity with which it [the Weapon-shawing] was performed, I neid say nothing, in regard the Magistrats took care to print all the particularities of it in the London Gazet, reprinted heire at Edinburgh, wheirin many things ware advanced a litle beyond what was true. All I shall say is only this : it was a great overfight to permit any of thefe that ware incendiaries in the commotions, to appear and muster that day, and yet there was not one purged out. There wanted not appearances of disturbance ; for there ware some Hotspurs among the crafts that proposed, when they ware marching throw the Long-Gate, that they should enter straight at Leith-wynd Port, and prevent the merchands ; which infallibly would have ended in blood, if it [had] not been prevented by clofing the Port, and speaking them smoothly. Again, when the merchand youths ware disbanded and retired, and their collours lodged, and the Toune Trained-bands, that stood betwixt them, and they ware desired to do the like, they utterly refused, till they had marched up the street, and shounen themselves as weell as the merchand youths had done ; for when they ware all drawen up, the firſt of them reached only Nidrie's-wynd head ; and accordingly they marched up to the Castle-hill, and fanfared up and doun the streets in a braging manner, for ane hower togither, not one merchand youth appearing all the while to give them the leift irritation : Then they diſſolved at their captain, Mr. Weir the peutherer's house. One of them feized on the collours, and said, ere they ware lodged, they behooved to goe and bring out Moffet and their friends who ware in prison ; for they confidered, so long as they had the collours with them, they would not be quarrelled ; but ſome others more sober ſtanding by, refiſted him, and ſo they diſbanded :

They rambled up and doun all that night ; but their was no hurt done, so the Magistrats rejoiced. The trades would have been upwards of 1200 men ; but many of them ware from Leith, Dalkeith, Musselburgh, and all the country about, which should not have been tolerat : none should have mustered but prentizes. The merchand youths would have been about 500 ; and it is a very pittfull case to think that Edinburgh hes a difficulty to put out 3000 men in armes.

It is strange to think what rancor and alienation of mind this affair bred betuen neihbours, which spoke to me a great disposition to civill dissensions, and a ripenesse towards discord in the hearts of people. The Trades their insolence in the affair was such a clear and dounright a proftitution of magistracie, that it became matter of admiration to thesse who are not acquaint with the toune's affairs, how the Magistrats should so tamely have digested that insolence ; and bein so far from seeking to have it punish't, that they extenuated it all they could. But the reason of it is very plain : the deacons of trades concerning themselves in the difference, did interpose, which proved so effe&uall, the Magistrats durst not refuse them ; for it is they who rule and influence all the elections ; and he who expe&ts ane office does not weell to disoblidge them. It's true, in the first hubbub and confternation they wrot a sharp letter against the Trades to my Lord Duke of Lauderdale, terming them factious and seditious villanes and rogues ; yet afterwards, when the Weapon-shawing was over, they by a second gave him ane accomp of it, wheirin they palliated and disguised the matter, and wholly excused the Trades ; and tho, by all the law in the world two or three of them, and particularly Moffat the fletcher, deserved the lenth of a tow for their tumult, and imprisoning the King's Magistrats, wheirby opprobrium was cast on the King himselfe ; yet the Secret Councell, upon a petition given in to them by the Trades in the beginning of September 1677, referr'd Moffat and his collegues to the Magistrats of Edinburgh, who set them at liberty without the leift stigma, after three moneths imprisonment. It might have been made a very plaufible ground, wheirupon to threaten the Trades with the forfaulter and amission of their priviledges ; at leift to have made them ransome and compone them ; tho in strict law, a few in ane incorporation (unlesse it be the wholle, or far the major part,)

committing a delinquency, ought not to endanger the liberties of the rest, who are innocent, or of their successors. But I have already shewen you the reason why the Magistrats ware so disposed to swallow doun all this rough usage, for which they ware much cryed out upon by the generality of the toune. Many thought it a fair opportunity for cassing the Deaconrie of the Flechers ; for it 's no art ; and why should they be incorporat in a society ? there is litle or no skill required in it. And, as it is a very just ordinance of the Toune of Edinburgh, among it's other statutes, that nather the deacon of the Flechers nor of the Baxters be upon the ordinar Councell of the brugh, confiscting of 25 perfones, because they selling things absoltly necessar for the life of man, if they ware fitting their, might obstruet usefull and expedient regulations and checks to be made against them, to the detriment of the brugh ; so, I think it ware no unreasonablen thing to disslove their deaconrie as weell as the corporation of the Maltmen was, the reason being like ; and that the Trades may not lose a suffrage and a deaconrie, erect another trade in their place. And really they are so inured and accustomed to blood, that fundrie of them think no more to kill a man then they doe to kill a Hyland cow ; and it 's for this reason, and on suspiccion of cruaulty, that the custome of England very justly repells a butcher from being upon any criminall assyse. Yea, I have heard some goe farder, that the very chirurgians there, because frequently employed in letting of blood, are not admitted upon assyses ; but I think this a streitch of the reason, which militats not with the like force in both cases : for with us, chirurgians are a very honest and famous calling, and are not received, upon the accompt of ane exemption and privileged from passing upon inquests, in regard they are taken up and busied in things of publict utility, and are *quasi reipublicæ causa* absent. But I think it no streitch of the reason, founded on præsumption of cruaulty, to extend it to hangmen ; for besydes that he is infamous, the law suspe&ts him as bloody : hence the Lords of the Seffion lately would not receive the hangman of St. Johnston a witnesse in a cause, but *cum nota*. It 's true, indeed, they are not so contemptible abroad as with us, yet all haye a horror at them. The Bourreau of Paris is a man worth 20,000 crouns per annum, keips his coach, but no gentleman will drink with him, or

converse, if he know him: for some cryme one of his prædeceffors had committed, the said office is *nomine pœnæ* entaill'd upon him and his posterity hæreditarily; (what if he want children?)—gladly would he resigne the office and give a large soume of money to be rid of it; but the Toune of Paris may not, at leaft will not, accept a refignation or dimiffion of his hand. By the very Pagan rites of old, a man was unclean who had touched the executioner, and theirfor all men studiously shun'd him and run out of his way.

There was one thing seimed to stain the luster of the merchand youths; they suffered the apothecaries and cooks and taverners boyes, and sundry other mean people, (who are not under any deaconry,¹⁾) to muster with them: Yet I remember of a decision recorded by Antonius Matthæus, that in Utrecht, by a solemne arrest, the cooks ware found to have all the priviledges of merchands, after a very contentious debate betuixt them. It's true Antonius Faber, in *Codice Sabaudo, tit. de dignitatibus*, tells, *quod coquus Principis annexam secum habet dignitatem ut et nutrix*; and Mr. William Thomfone, the wryter, tells me, that the first Laird of Anstruther was cook to Malcolme Canmoir; and that one of the Lairds since married a daughter of Lauder of Basse;—that makes Enster very old, if true. As to the fee of the master cuik, I find it 5 lb. in the 5^t chapter of the old laws of M'Colme Mckenneth, second of that name.

It's ane old controversy that betuixt the Merchands and Trades of Edinburgh, (as I have showed already,) and what burfts furth with much bitterneffe upon all occasions, they being jealous one of another; and it's for this cause why the Merchands, ever since the Toune acquired the Cannogate, which was in 1630, have ever refused to annex it to the royalty of Edinburgh, leift, by that acceffion it would too much increase and strenthen the Trades, the Cannogate being most inhabited by such, and oft tymes better craftsmen than the tounsmen; who, out of a meir principle of malice, doe theirfor hinder them from their freedome within the toune, and taxes them exorbitantly where they stay, and confiscats their worke, if they apprehend it within the ports.

¹⁾ Yet the contrare found by the Toun of Edinburgh's statutes in 1587; it's folio 69.

Some quæstioned by what power Lithgow and Collinton could a& there not being a quorum of the Councell, without which capacity they ware but like other private men; especially wanting a cheiff officer of the forces: Yet I am of opinion, in such exigents as thesse that require haste, and expedition is their life, any one Councillor stands invested with a sufficient power to obviate growing tumults, and may give orders to the standing forces to suppress them, where the uproar is nottor; for a Councell cannot be conveeneed so suddenly as the affair may require.

The use of Weapon-shawings is very ancient with us, and ware founded upon our custome of attending the King in all his raids and weirs, 40 dayes, on the countrie's expence, and then they mouldred away. See 60 A&t, Ja. I., Parl. 3^d, anno 1425, and the many citations their. Upon this foundation did A&t 25 Parl. 1663, Act 2^d Parl. 1669, and Act 1 Parl. 1672, rear up the present militia for the superstructure. The Romans had such weapon-shawings, and we have rendred their word *ad verbum*; for they called it *armilustrium*: see Goldman on that word.

It is not of late that Edinburgh hes had the reputation of a factious and a mutinous toune: this is not my character; it's Heylin's words in his Cosmography, and in his description of Scotland, pag. . We have spoke above of the tumult of the 17 of Dec' 1596. When the Lord Seton, about 1555, was Provest of Edinburgh, there was an uproar in it, and two of the bailzie came out to their provest at Seton; and he, finding they ware accessory to the conspiracy, he imprison'd them in the pit of Seton, (a place I have seen,) which was a dreadful contumely; and rode in presently to Edinburgh, and appeased and choak't the commotion.

SUMMER SESSION, *Primo Junij* 1677.—This day, the Lords resolved to have taffeta purple gouns for the two moneths of summer, their cloath ones lyned with velvet being too heavie. Yet this did take no effect then; and they of themselves cannot alter the habit, fince the King, by the 8^t A&t in 1609, and Charles I. by the 3^d A&t in 1633, are empowered solely to determine the habits of judges and magistrats: yet thesse A&ts feeme to have been meerly personall and temporall.

2^{do}, The Lords ordained the Advocats to attend at 9 howers the moneth

of June, and halfe 9 all Jully; which does not agree with the 49 A&t of the Parl. in 1537, by which 3 howers attendance is all [that] can be required of the Advocats: See this enlarged out of *Mænagijs, &c. alibi.*

3^{to}. One day at ane meeting for examination, the Advocats conveening very thin, it was enquired how many Advocats went to a quorum: Sir Androw Birny, Dean of Faculty, thought ten made a quorum, because that was the originall number of the Advocats at the first erection and institution of the Colledge of Justice; but in this he failed, for the 64 A&t Parl. 1537, names but 8 Advocats, and 8 is a quorum of the Seffion, being the major part of the 15 Ordinars. Yet A&t 57 *dicō Parlamento* requires 10 Lords besydes the President or Chancelor: but this is not obserued; yea, in the Saturdayes, or in the afternoons, or when there have been 4 Lords at the fide-bar, and one on the bench of the Utter House, I have seen the Lords within not six with the President. Only they pretend, that concluded causes may be advised, and deliverances on bills given, by a number under the quorum; yet I see no warrand for this, and concluded causes require a great deall of attencion and skill; and the Lords present are not only wrytten in the Sederunt-books, but ware alwayes insert in the beginning of all decreets, even for some years after the King's Restoration in 1661, (tho now disused, I know not why,) that it may appear how many ware present at the prononcing the decreet. Yet I know not how the Lords would take it, if one of their sentences ware offered to be reduced upon that reasoun, that it can be proven there ware not a quorum of the Lords at the advising it, whether it be ane interlocutory joint or definitive. *Vide* the other Manuscript, 3^{to} Junij 1679.

Eodem 1° Junij, It was quarered amongs the Advocats, If a dead corps might, in the law and practise of Scotland, be arreisted and stopt from interment, for debt, by creditors; on occasion of the Countes of Winton, who dyed this day, and being addebtetd to merchands, and to sundry trades people for vivers and other necessars, they made a great clamor, being poor; and fearing the Earle hir husband, because of the differences, would not oun hir debt farder than hir annuity of 6000 mks. reached, which was all fornailed already, they ware talking of arreisting hir body: But

certainly, tho it be tolerat in Holland and some other places, it is reprobated by us as a most barbarous inhuman custome ; yea, the law condemnes it for irrationall. . . . It could be done upon nothing with us, (except it ware upon ane expresse supplication to the Lords of Seffion, or to Secret Councell, which would never be granted,) unleesse upon a caption, which no messenger could execut, fince it commands to apprehend the person of such a man or woman : Now, being dead, it's no more a person, no more a hypostasis, the union being dissolved. However, this arreising has been attempted as to persones dying in prison, but was never allowed nor sustained ; only I have heard that a man who dyes in prison, it's *ipso facto* a discharge of all his debts : this I think holds in England, but not with us. Yet when any person dyes in the Tolbuith, the Magistrats causes fight them before famous witnesses, especially the creditors, (if they can be got,) to show they are truely dead, that no fraud be done of liberating living folk, under the pretence as if they ware dead.

14 Junij 1677.—The Secret Councell, upon a complaint given in by A. fol. 285,
No. 573.
sundry gentlemen and others, in the west country, granted a commiffion to the lairds of Houston, Orbiston, Bischopton, Greinock younger, and Mr. John Preston, (he alwayes being one,) to try and judge some witches imprisoned at Dumbarton, who had been delated by Jonet Douglas, the dumb laffe, (of whom *vide supra* at large, num. 551.) as they who had made and roasted the portrait of Hamilton of Barnes, a good gentleman and weell loved their, and wheirof he dyed.¹ The pictures ware tane, and Mr. John Eleis, who was employed for the witches, told me he saw them, and that they ware the most childish thing could be, and had scarce any resemblance but 2 stumps for hands, 2 for legs, holes for eyes and mouth, and made of clay. In August 1677 they ware put to the knowledge of ane assise, and found guilty and burnt. One of them was condemned upon litle or no probation, but fame and bruit of

¹ James Gaffarell, in his pretty book of Unheard-of Curiosities, (*capite 5 et seqq.*) thinks these pictures and their efficacy and effects attributed by us to witches and to the devill, may be naturally done by Talismanicall figures and sculptures ;—such ware the Brasen serpent, the Philistins mice, the Jebusites blind and lame, &c.

the country, on the pretence of the assisers their oun privat knowledge of hir guiltiness; ane assiser being halfe a witnesse and halfe a judge; and tho the 63 A&t in 1475 provides only ane assise of error against assises that clenges, and not where they condemne, yet assisers should not be permitted to cloak their oun private revenge and malice under that pretence; and it was thought the Secret Councell might, in materiall justice, supply that defect and call for the assisers, and if they found they had not proceeded *secundum allegata et probata*, or that they could give no rationall accompt of their *privata conscientia* wheiron they condemned, then punish them as *temere jurantes super assisam*. Wheirupon Mr. John Eleis did prepare a bill for the Secret Councell.

A. fol. 290, b. No. 587. 28 Junij 1677.—Sir Charles Erskin of Cambo, Lyon at Armes, and the Earle of Marshall, had in petitions at the Secret Councell anent the Earle of Kellie's daughter of the first ventre, with Collonell Kilpatrick's daughter, for the keeping of hir persone, hir father being lately dead;

and both ware rivals and competitors to have the girle to their sones, expecting a great part of Kilpatrick's fortune with hir, his sone being lately killed in the French war. The Councell sequestrated hir in the hands of the Archbischop of St Andrews, which was all one as to have given hir to the Lyon in keeping, his daughter being married on the Archbischop's sone. Both of them sent over persones to Holland, to treat with Kilpatrick; and whille the Lyon was fwell'd big with expectations of this match to his sone, and of succeeding in the Earldome of Kelly, his brother being dead without sones, only left his lady with child, and it depended on the event of that posthume, (and he was talking of care to be tane, for fear of supposition of a wrong child: see the title *de ventre inspiciendo*,) but it proved a boy; he is in the midst pulled away by a fever, and leives all thesse cares to his successors. *O fragilem hominum fortunam!* *Inanisque spes, qua in medio saepe cursu franguntur!* See this accompt of his death *alibi* in the other manuscript.

A. fol. 291, No. 588. 29 Junij 1677.—Doctor Burnet, now Archbishop of Glasgow, per-
shues two comisar clerks of Peibles, for putting them from their place.

Alledged, They cannot be removed, because they posseſſe by vertue of a gift from Robert Leighton, when he governed that diocy. Replied, That gift could not defend them, because it was a *non habente potestatem*, he never being Archbifchop of Glasgow, in fo far as he was never legally tranſlated from Dumblaine to Glasgow, as the Canons require; (ſee the forme of the tranſlation marked by me *alibi* from the Service-book, in June 1677, on the tranſlating of Mr. Murdoch Mckeinzie from Murray to Orkney.) 2^{do}, The conjoyning of two in one office, and to the longeft liver is unlawfull, and not to be permitted in any but proprietars; elſe administrators of bischopricks may, by ſuch tailzies, survivances, and reverſions, forſtall all the profit of places for ane age to come, and prejuſge his ſuccelſor in the place: which is moft unreasonable, for if he may conjoyne tuo then he may put in fix, viz^t, the father, ſone, and grandchild, or brother, and fo inhance all for 50 or 60 years to come. Duplied, By our law, tranſlations are not abſolutly neceſſar; (ſee A& 1 in 1617;) that it is but a Popiſh niceſy, which can never be obtruded againſt fo materiall æquity, wheir they are invested in a place by one who had a putatiue title, and the King's call, and was in actuall poſfeſſion, and holden and repute Archbifchop; and they ware in *bona fide*, to take a right from him. As for the conjoyning, cuſtome hes made the fame lawfull, there being nothing more univerſall; as old Sir David Falconer of Glenfarquhar and his ſone Sir David, ware conju& comifars of Edinburgh; Mr. Harie Hay, clerk to that comiſſariot, had got the place alſo continued on his ſone; Sir William Purves had done the fame with his office of follicitor to his Maſteſty; and the Lyon had the gift of that office to himſelfe and his ſone; and Mr. W^m Ramsay and Mr. Ja. Rocheid ware conju& clerks of Edinburgh. Tripled, That any canonift who underſtood any thing of the iuſtitute of the clergie in church benefiſes, would confeſſe that tranſlation was abſolutly neceſſar to give him a right to the benefice *ad quem*; for they goe upon two grounds: 1^o, They accompt it *spirituale matrimonium* betuen the Bischop and his church; now the marriage knot cannot be diſſolved till he be tranſferred. 2^{do}, In imitation of the perſonall rights in the feuſall law, their *breve teſtatum* or chartor, and their *iuſtitura et inducſio in poſfeſſionem*, the Canons have introduced preſentation, collation, and iuſtitution; and wher one is tranſ-

planted, then the tranflation is his new investiture and induction unto the posseffion; and without that they acknowledge no right in his person, nather to performe spirituall offices within that diocy, or to intromet with the temporality and rents.—The Lords sustained the clerks their conjunct gifts, in respect of the custome to give the survivance of places, and repelled all the reas ons of declarator and reduction against the same.

A. fol. 291, • 5th Julij 1677.—The Comfit-makers in Edinburgh ware seeking from the Secret Councell to be erected in a company, and have the priviledges of a manufactorie, conforme to the [40th] A&t of Parl. in 1661, anent usefull manufactories that shall defyre to setle amongs us; for every age produces perfections in trades, and new inventions. The sugar-baking at Leith is declared a manufactor already. We have got sundry brasiers of late among us, who work weell.—For naturalizing and encouradging strangers to come and dwell amongs us, see the A&t in 1669.

A. fol. 293,
No. 601. 11 Julij 1677.—At the Crimall Court, the dyet was deserted against Robert Grahame, provest of Dumfreis, who was pershued for a litle ryot in breaking up the doors of a house, and taking a man prisoner furth theirof, after ane intimat suspenzion.

A. fol. 293,
b. No. 608. 19 Julij 1677.—At Secret Councell, Mr. Robert Traill, having been apprehended the day before, was relegat to the Basse.

The businesse of the Earle of Argyle and the Macleans occasioned much heat; see it *supra* in Jully 1676, num. 489.

Thesle who had undertaken to drain and recover the sands at Montrose, by ditching out the sea, and gaining so many miles of ground, which, by sowing a seid on it, in few years would make it arable, and pay 30,000 m&s. *per annum*, gave in a complaint against Erskin of Din, from whom they had bought the ground, that he had come in ane ryotous manner, and a convocation of his tennents, and throwen doun their dyke, which he alledged they had incroached on his ground. His peek was, that he had sold it for 500 m&s. and had retained no part of it after it should be recovered.—They compounded the matter.

There was also a petition given in by the Tutor of Waterton, complaining on the Bisshop of Aberdean, that tho his pupill was uncontroverted patron (this is not true) of the church of Ellon, and had presented one Mr. George Milne theirto, yet the Bisshop refused to collate him, theirfor craved the Bisshop might be cited over : (see the petition besyde me.)

This same day, the Councell past ane imposition of a turnor each footman, two each horse, a baby each cart that should passe, for years, ather the bridge of the Abbey of Haddington, or Linton Bridge, and that for making up a stoc to repairing them, being ruinous.

24 Julij 1677.—The Chancellor's cause with my Lord Melvill, which he gained in winter last, on the 20 of *Februarij* 1677, (see it in num. 548,) is now again revised and dispute. Melvill having borne it off all this summer sesson, (notwithstanding all the solistation the Chancellor did make for a hearing,) till my Lord Lauderdale's arrival here ; and he being come, Melvill turnes the chasse and obtains a hearing, which the Chancellor would gladly have shifted ; and by my Lord Lauderdale's presence overawing the Chancellor's friends, he gains the cause : For the Lords this day found the King, as superior of the estate and lordship of Levin, had right during the vacancy to the retoured duety, (by which taxations ware imposed of old :) Which retour'd duety General Lesly had chosen to be a feather, to denote his calling of a soldier, but Dundonald had lately converted and changed it unto 100 £. Scots yeirly : and the truth is, retoured dueties are alwayes in money, tho feu-dueties may, and oftymes are, in other kinds of things ; But as for the maills and dueties, the Lords found they ware not *bona caduca*, and nowayes in non-entry, there being heir no contempt nor fault against the superior, so much as præsumptive or interpretative, which is requirit to all non-entries ; but that they ware *bona vacantia*, and lying in *haereditate jacente*, (tho this was a new notion of it, never before heard of in our law,) and so fell under administration, and would belong to a curator *bonis datus*.

On the 1 of August, at the Exchequer, the maills and dueties of Levin ware given by the King's letter of administration as *pater patriæ*, to David Melvill and his airs, as *bona vacantia et nullius* ; and makes him *curator*

A. fol. 294,
No. 614.

bonis, to defray the debt, for the use and behoof of the possible air, and as his *fidei commissarij*. It did not bear Given under any seall, and it was quærered what sealls it should passe: It being the first gift of that kind, the Exchequer may supply the defet, and ordaine it to passe what sealls they please. Presentations of the Archbischops and Bischops passe all the sealls; presentations to other beneficed personnes passe only the Privy Seall; patents to noblemen goe, *per saltum*, to the Great Seall. They say, the Lords, this session, fand that the bedell of the Chappell-royall's gift needed not passe any sealls, that having been objected against it as ane defect and informality.

Some superiors, when they give chartors to their vassalls, (particularly Argyle, &c.,) they make themselves airs of tailzies to their vassalls, in the third or fourth place, degree, and order of substition; by which oft they fall to succeid in the property: but the vassalls may alter it by a second bond of tailzie, or by granting a bond, wheiron the lands may be apprized from them.

Supra at number 548, in Melvill and the Chancellor's case, I have remarked a very loyall clause was in the former Dukes of Hamilton their chartors: now I am informed, that in the chartor of this Duke, and of some other great personnes, (which was also craved in passing Dom. Pedro Frazer's chartor of Dores [Durris], on his father's disposition and resignation to him, but was refused by Dundonald: see the disposition and chartor *apud me*;) there is a very different clause, viz., that in caise any of them commit treason, they shall not forfault their lands, but shall deschend and goe to the nixt air: This is *pessimi exempli*, and disadvantageous, and reflecting both on the honor, profit, and credit of the Croun.

A. fol. 295, b. *Eodem die*.—Bruce of Broomhall was this day fyned at Secret Councell No. 616. in 100 lb. sterl., because a conventicle was keipt by his tennent upone his ground, conforme to the late A&t of Secret Councell, and the former precedent against S. Jo. Gibsone. The toun of Coupar was also fyned in 50 lb. sterl. for suffering three prisoners to escape.—William Cunnyng-hame, in the links of Abbotshall, and some other maltmen in Fyffe, ware fyned for buying bear cheaper than the 7 lb. the boll, expressed in the

Councell's proclamation, and for selling their ale dearer than 16 pennies the pint. Whatever any of them acknowledged on oath they had given for the bear they had bought, the Committee confidered the number of the bolls, and what it fell short of the price at 7 lb. per boll, and fyned them in a summe equivalent.

The Councell wrot a letter to his Majesty, desiring he would be pleased to grant warrand to his Thresurie for lifting as much money as will repair the Castle of Blacknes for holding prisoners, the Basse being already full.—His Majesty sent doun a warrand conforme.

26 Iuliij 1677.—The Master of Rae obtains a decret against the Stranaver men for 40,000 mks., as the avail of the hareships and depredations made by them during that inroad unto Caitness, in 1668. The depositions of the witnessess, amounting to upwards of 30 sheits of paper, the Lords referred to two of their number to peruse; for it had been impossible at any one federunt to have gone throw them all, much leſſe have confidered what was proven by two concurring witnessess, and what not: Theſſe two, viz. Forret and Newton, to whom it was recommended, drew them all under generall heads, and marked what each of them materially deponed, and how many agreed in one thing.

At Secret Councell this day, Macintosh petitioned for fyre and fword against ſome of the Clans that ware broke louſe.

27 Iuliij 1677.—The Duke of York, as Hy Admirall of Scotland, raised a Declarator against the Earle of Argyle, that the Spanish ſhip cast away upon the Iles of Scotland, *in anno 1588*, being one of the prime ſhips of that Armada, belonged to him as Admirall, by which office he had undoubted right to all wracks: ſee a little of this action in another little manuscript beſyde me. It was anſwered for Argile, That he had the ſole right to that ſhip, because his father had a gift of it from the Duke of Lennox, who was Hy Admirall for the tyme, and it was confirmed in Parliament, and cled with poſſeffion, by taking guns and other things furth theirof. Replied, The gift was null, not being ſubſcryved by his Maſtety, tho, by the narrative, it appeared it was ſo intended; for

his Majesty was insert as a disposer. 2^{do}, The quota to be given to the Duke of Lennox was left blank, which proves it was but ane imperfit evident; wheiras lately, to ocular inspection, there is filled up the 50th part, which is so unsuteable and disproportionat to his interest, that it clearly appears that could never be commoned. 3^{do}, The Duke of Lennox could not dispose upon that which was not in *illius dominio*,—but such was this ship; for the law has condescended on certain wayes how property shall be acquired, and hes determined that it's not *nudis pactis*, but *traditionibus*; and posseffion is ane effentiall requifit and ingredient to the constitution of property with us. Now, Lennox had no posseffion of it; and as to thefe faint deeds of posseffion that Argyle condescends upon, whatever they might import in things lying upon the earth, they can never passe for a sufficient posseffion of things lying in the bottome of the sea, *in fundo maris*, for they require another kind of posseffion ere one can have right theiro, and that is loco-motion; they moft be stirred out of the place that poſſeffes them: This ship is in a manner *sub maris dominio et potestate*, the sea is the *medius obex*, the *medium impedimentum* that hinders acquisition of property in it; this *obex* is not removed nor overcome, but by loco-motion, which Argyle cannot pretend to. Then Sir G. Lockhart urged, with a great deall of elegance and subtlety, the parallelis of a *fera bestia* wounded, of a treasure found, or of mynes in the bowells of the earth; and of the *aper tane in rete et caſſibus*, mentioned by *Ulpian, Pomponius, et Proculus, in L. 44, et 55, D. de acquirendo rerum dominio*. He farder alleged the giving the Admirall right to wracks *in fundo maris*, before he apprehended any posseffion, was to state the right of property of thefe wracks in the person of each Admirall, fo that he might dispose upon them as freely and absolutly as he might have done upon any other thing that was his uncontroverted property: and at this rate, that ship of the 1588 would, by thir principles, have belonged to the Earle of Bothwell, who was then Admirall of Scotland, and would have transmitted and devolved to his airs and succelfors, if it was his property, which is absurd: He might have gifted it, and in generall all the wrack that had happened on the coast of Scotland fince the flood of Noah, which is æqually absurd, to imagine, that

ane administrator of ane office can gift its casualties in great, or theirby forestall, prevent, and anticipate the benefit of his successors; (*vide supra*, num. 588;) for ane Admirall can dispose upon no more of naufrage goods than he knew, and no more of what he knew than he had by a fix't and solid possession (tho not totall) put himselfe in a rationall hope of compassing: all the rest stands as it ware in its native freedome, continues to be *nullius*, and remains to be the fruit of some succeding industrie. Duplied, That the King being air to Lennox, is bound to warrand his gift in favors of the Earle's father, since the Admirality accresced to the King, and was by him conferred on his brother; that there is no warrand in law for that distinction, why more solemne possession is requifit of things detain'd *in fundo maris* than of any other; that law attends no more but a symbolicall possession; a possession of a part to give right to the wholle. And loco-motion was called ane idle fancy; for [if] it was supposed the ship ware brought to the surface of the water, and fell doune again, ware not that a pregnant deed of possession?

Argyle himselfe had a litle discourse, showing the vast expence he had been at in making the discovery, and wished once it ware brought above board, and ware on the dry land, ere we diſcorded about the division of it, else it should in earnest verify the proverb of the King of Spain's gold; that if any of theſſe gentlemen doubted of the truth of his discovery, he ſhould take them doune and let them ſee it, if they ware content. The Earle of Kincardin, as Judge Admirall, had alſo a ſhort addrefſe to the Lords. But they found *una voce, nemine contradicente*, (that the Duke of York miſt not imagine he had got wrong, which miſt have been imagined if any had woted for him,) the Earle of Argile had beſt right; and theirfor they preſferred his gift and ſustained his defence theiron, and affoilzied from the Duke of York's libell. The Duke would think himſelfe but ſoberly oblidged to them who adviſed him to this groundleffe proceſs, which was thought to be by the information of Sir G. Lockhart. But his Hienefſe wrot doune a very complimenting letter to Argyle, approviſing the justice of the Lords ſentence, and ſhowing his hearty compliance and acquiescence theirwith.

There was alſo another clame to this ſhip in the perſone of Tillibardin,

now of the Marquis of Atholl, who laid it at the Duke of York's feet ;—it was a gift from King James to it, in favors of Tillibairden. But it was of no moment; for, 1^o, It was præscryved, nothing having followed upon it by the space of 40 years, nather was it ever cled with the leift possession. 2^{do}, It was only granted by the King, and so flowed *a non habente potestatem*, the King being denuded in favors of the Admirall by the patent.

A. fol. 298, No. 629. 30 July 1677.—This day at the Criminall Court, one Cunyghame, cook See 9 of Au- to the Earle of Kinghorne now Strathmoir, was pershued for the treason-
gust 1678, num. 2, [M.S.] able and wilfull fyre-raifing in the House of Glammis: There ware E.] James Lermont's fundry præsumptions libelled against him, the Justices referred the con-
case, it's page fideration of them to the Affise. The Affise, to mock the Justices, returned
19, 20, 21.

him guilty of fundry præsumptions of his being the doer of it: The Lords would have had the Affise encloosing again, and making their verdict that he was simply guilty. They refused, and indeed in law could not, for by the 91 A& Parl. 1587, if any affysers, after they are inclosed, doubt and goe out, or if others come in to them, the pannell shall be *ipso facto* clenged; and it ware a strange præparative to force ane affyse to inclose again after they have published their verdi&t, no man's life ware secure at this rate. Their verdi&t was found sufficient for commuting the ordinar punishment, *in pœnam extraordinariam*, of banishment out of Scotland. But Strathmoir being displeased, applyed to the Secret Councell, who banish't him to the plantations; but he is so wicked and croce a fellow no ship will adventure to take him in. It was pretty odd in the Councell to alter the Justice's sentence, who ware *func*t*i*, especially to make it more severe; for wheirever the Councell medles with the punishment of malefactors, it is to mitigat, *æquitate quadam præatoria*, the extremity, but never, *rigore tribunitio*, to augment it. See the Criminall Adjournall-books, for the burning of Frendraught Tower, in 1632; see the case of Sir Ja. Stamfeild's woman, who attempted to burne his house, in Mck.'s Criminales, part 1, cap. 1, pag. 10.

A. fol. 298, No. 630. *Eodem tempore*.—Robert Malloch was also pershued before the Justices for stricking a sone of David Boid the merchand, within the Session-

house, in the afternoon, the tyme some Lords ware examining witneses. Alledged, The 173 A&t of Parl. in 1593, means when the haill Lords are met in the forenoon, so as to import the pain of death or cutting of the hand there mentioned; 2^{do}, He was *lacefitus et provocatus*, and theiron heis raised ane exculpation. The moft that could have been made of it was a litle ryot, for I think the A&t means not the afternoon, *et in penalibus quæ odiosæ sunt statuta extendenda non sunt*, and he may be put to take a remiffion: See the scuffle fell out betuen Mr. Rorie M'Keinzie elder and Mr. Jo. Stewart of Ascog, advocats, at the bar in November 1675, and the obferves there.—In August 1677, Robert Malloch being put to the knowledge of ane inquest, and one of the most materiall witneses being wrong designed in the copie given to the pannell, and fo caften, being designed Androw for Alexander, fince the pannell could not prepare objections againft a man he knew not, he was clenged for lack of probation. The English are moft exa&t in fuch lapses as theffe: See instances of wryts caften among them because of false Latin, Philips's *Studij Legalis Ratio*.

Ultimo Julij 1677.—The Secret Councell revived their A&t in Januar A. fol. 299,
No. 633. laft, anent the price of the bear at 7 lb. the boll, and the felling the aill at 16 pennies the pint, for the crop 1677 upon the ground, to continue for the enshueing year 1678.

3 *Augusfi* 1677.—A woman in St. Johnston was condemn'd in the A. fol. 300,
No. 636. Crimall Court to be hang'd for murdering a child shee had borne in fornication. Her conviction proceeded upon meer præsumptions, and theffe not very violent ather: as, that shee had lyed in the place which shee first named where shee had buried her child, for it was found shee had clandestinely buried it in another part; 2^{do}, that shee had called for no help or affistance in the bringing furth the birth, tho shee was within a toune—but this might be throw shame, and is only *crimen in suo genere*; 3^{do}, their was a nip found in the child's neck,—but that might have been gotten in the ftreſſe of labor. (*Vide supra* June 1676, the skipper's wife in Dysert, num. 476.)

A. fol. 300,
No. 637.

7 Augusti 1677.—My Lord Cardroffe (besyde his former fyne of 1000 lb. sterl.) is this day fyned in the halfe of his valued rent, for christning two children by unlicenced ministers, contrare to the [6th] A& in 1670, and refusing to depone theiranent. He falling very fick, on the 12 of August 1677, gave in a bill to the Secret Councell, met in the Abbey, desiring liberty to be transported to the toune, where he might be with more care used in his sicknesse. This bill was slighted, at which the Earle of Mar took offence.

A. fol. 300,
No. 638.

4 Sept^r 1677.—Sir G[eorge] Mckeinzie is this day receaved King's Advocate at Secret Councell, and his Majestie's letter anent the Officers of State their being removeable at his pleasure, is approven: See both thir at large in my collection of the Sessyon occurrents *alibi*.

A. fol. 300,
No. 639.

6 Septembris 1677.—This day, John Hamilton, sone to the Laird of Inchgotterick, Patrick Burne, Irishman, and Robert Dicky, in whosse house they ware apprehended, ware pannelled in the Criminall Court for cunzeing of false mark peices. Hamilton and Burne confess it, only deprecated their sentence that it might be only banishment: Dickie denying all, there was probation led against him; a little naked boy of 14 years old, not worth the King's unlaw, and *conscius criminis*, being receaved *cum nota*, did evidently make him guilty of art and part of accession and knowledge; all the other witnessses said nothing, but that he refisted Sir Jo. Falconer's men when they came to apprehend the false coiners, and did beat them: (See the libell and indytment besyde me: see the long dispute against the relevancy theirof in the Adjournall-books, made by Mr. John Eleis and myselfe, against Sir G. Mck. in his first appearance and a&t as King's Advocat.) They ware put to the knowledge of ane assyse, who found Hamilton and Burne guilty on their oun confessions, and clenged Dickie for lack of probation; wheirupon the Advocat protested, he might be still heard to pershue him for refisting thosse cled with the King's authority, and hurting them; and accordingly he raised a complaint against him at Secret Councell, with answers theirto. But Dickie, hearing they intended to imprison him again, he keip't himselfe

out of the way. The other two having applyed, on the 3^d of October, to the Secret Councell for a mitigation of their deserved punishment of death, which the Justices had superceded to pronounce to give them tyme, the Councell ordain'd them to be banish't, they finding caution under the paine of death, and never to returne nor to use that unlawfull trade elsewheir. Burne being a stranger, caution was imprestable for him to find, and so the Councell's favor might be elusory and ineffectuall, he gave in a bill entreating they would accept of his oath, which was all he could doe, that he should never returne again. (*De falso nummario et falsa moneta*, see Matthæus and other criminalists; see Mck.'s Criminalls, *titulo* of falsehood, pag. 142.) Many complain'd that they ware not hang'd, and thought the preparative bad and had no precedent, for all the false coiners standing upon record in our criminall books had been punished by death. If they had revok'd their confessions when they appear'd upon the pannell, *Quæritur*, If their revocation would have been admitted? I think not, because they ware past their minority: (*Vide supra*, Decr 1674, Mr. Ja. Mitchell, *num. 451*; *item*, Januar 1676, Clerk and Ramfay, *numero 459*:) Yet I hear that a confession emitted by a party before fewer than three of the Lords of the Justiciary may be revok'd, as not before a quorum and competent number. And it is a good *cautela*, where the probation is not full against a criminall, and it's apprehended he may deny it before his libell be read, or the assyse called, to try at him if he will voluntarily confess it; which if he doe, then to proceed and judge him, but if he doe not, then it will be fit to send him back to prison till farder probation be had; for if they proceed, the assyse must clenge him, and so he can never be accused on that head again.

On the 18 of September 1677, Andrew Adam killed his father with a fore hammer, by which he gave him 3 knocks on the head and broke his scull. The lad had been observed to have been hypocondriak for two years before, but no fullen melancholy and discontent can excuse parricide. He was arraign'd before the magistrats of Edinburgh by their fiscall, being tane in *flagrante crimine*, the nixt day, found guilty on his oun confission, and hanged on the 20 of September within three funs, and his right hand that

did it cut off with ane ax. That Andrew Adam was frappe and his head distempered was evident, and the reveries he used to myselfe ware a sufficient conviction of it; yet thesse small degrees of fury ware not of that importance as to excuse him *a tanto*.

A. fol. 301,
No. 641.

3rd Octobris 1677.—One Rutherford pershues the Shireff of Tivedale and Magistrats of Jedburgh before the Secret Councell for w̄ongous imprisonment of him, and rude usage. In the defence it was alledged, that by the Border Laws (see them in my Balfour's Pratiques) one may be summarly arreifted for debt, because of the great convenience they have of shifting themselves and flipping from the one kingdome to the other, and that theirfor the Lords of Seffion have allowed of this custome. This is like the practise in the Admirall Court, causing the parties find caution both *judicio sibi* and *judicatum solvi*; which the Lords found not unreasonable on the 16 of Nov^r 1636, (Stewart and Ged,) because of the vagrant condition of strangers and seamen, and others most interested in that Admirall Court. The defenders, after probation, ware affoilzied, and the pershuar, for his calumny, fyned in ther expences.

A. fol. 301,
No. 642, § 1.

Eodem die.—George Young, late bailzie to my Lord Winton, in his lordship of Kirkliston, now sold to Hopton, pershues John Hope of Hopeton before the Councell for a ryot, in spulzieng and leading away his teind of his peice land besyde Winchbrugh without any right theirto, and George had a standing tack. After probation, the Lords found he (Hopton) had done wrong, and theirfor ordain'd him to restore, and fyned him in 20 dollars. If a tennent's tack be expired, tho I have warned him to remove, yet I cannot enter *brevi manu* to the lands without a decreet of removing: it's true the warning takes of tacit relocation; even so in a tack of teinds expired, ane inhibition takes of the tacit relocation, and founds a title for ane action of spulzie; but one may not after ane inhibition, (which will be got *periculo petentis*,) nor because the tack is expired summarly, and *propria autoritate*, medle with and draw the teynd; for if the other person oppose, then the drawer will be guilty of a ryot; nather will the inhibition nor expiration of the tack defend

him therefrom, but what he does ought to be *authore prætore*, and only pershue a spulzie of teynds, and then enter; for *non est singulis concedendum quod per magistratus expediri debet.*

Eodem die.—Sir John Harper, Shireff-deput of Lanrick, and sundrie other Shireffs, ware summoned in before the Councell, to report their diligence for discovering Conventicles, conforme to the injunctions of the A&s of Parliament in 1670. *Item:* Sir William Binning, late Provest of Edinburgh, gave in a bill to the Secret Councell, desiring he might be continued as the persone who was to subscryve all the Admiralty passes, in the south distric^t of Scotland, (*vide supra*, Februar 1677, numero 554,) fince he was knownen, and the present Provest was not versant in such affairs, &c. The Councell granted it, tho their oun forme act bore they should be subscryved by the Provest for the tyme being; but this was a bafle to Francis Kinloch in the very entry of his office.—*Item:* § 4. A letter from his Majestie ordaining 40 mo[re] men to be added to his troup commanded by the Marquis of Atholl, without any other officers to command them then thosse that are already. *Item:* On supplications given in by Mr. Geo. Scot of Pitlochie, and Frafer of Brae, they are liberat out of the Basse, upon finding caution to keep the peace and re-enter when called.—Bennet of Chesters gets 3000 m^ks. of his 4000 m^ks. of fyne remitted, and the exactiōn of the other 1000 m^ks. superceded, till they see what his deportment and behaviour will be. We have marked *supra*, that Tolquhon was set at liberty and Jerefwood had got a discharge of his fyne: Whence all this favor came to the Non-conformists seemed strange to some. It was a politique of my Lord Duke of Lauderdale and his Dutchesse to render himselfe gracious and acceptable in the hearts of the people, and regain his lost credit; which undoubtedly was likewayes a caufe that made him listen and give ear to ane indulgence and accommodation w^t the Presbyterians; for he was serious in it, and did it not meerly to cajoll or gull them. The carriers on of it ware the President, Argyle, Melvill, and Arniston, with James Stewart, and the Ministers of that party, who ware allowed freely to come to Edinburgh. They offered to raiſe 15,000 l. sterl. preſently for my

Lord Lauderdale's service, and to contrive the elections so that in a Parliament he should carry a subsidy, and the President get a ratification of what he pleased, provyding their Indulgence ware secur'd to them by Act of Parliament, so that it might not be nixt day recalled: All thir propositions my Lord Lauderdale greedily embraced; but when they came to explain the way how they would effectuat all this, he could not comprehend it so weell, wheirupon it stod. The Bischops, on the other hand, finding this to strike at the very vitals of their occupation and Diana's shrynes; they, to counterballance, resolve to ply and bid as fair as they are able, to get his Majestie's supremacy in spirituall matters so qualified, that the King may give way to erect a Court of Hy Commission again, in which they may act by themselves against all recusants. It's like, if this ware granted them, it might prove a very ready means to break their neck. At last my Lord Lauderdale, at the Secret Councell, on the 9 of October, publicly disouned that ever there had been any audience, treaty, or capitulation, between him and the Non-conformists, leist the rumour thereof might pre-judge him in the affections of the English clergie: and it was reported, that the Archbisshop of St. Androis had wryt of it to Canterbury, and Morley Bisshop of Winchfetter, and they had applyed to his Majestie, who wrote peremptorly to my Lord Lauderdale to desist. Whoverer, he ceased not to doe favors to private persones of that party, as we have instanc't already, in releasifg their persones or fynes.—At this tyme also, one Mckilichan, a minister in the Basse, was liberat, but confined to the Ile of Skie or Ila; and another, called Mr. W^m Hog, was confined to Kiptyre. Some hardly look't upon thir transportations as any curtesie; however, they will have occasion to plant the Gospell in thosse barbarous places, which is more meritorious than to labour in their miniftry here, where there is eneugh already.

A. fol. 301,
b. margin.

In the midle of October 1677, on report of many robberies and deprædations in the Hielands, and that they ware like to break louse, there was 1600 stand of armes, muskets, pouder ball, bandeliers, &c., dispersed, to Stirling and other places. Some apprehended it was to be in readinesse against the Western malecontents, if they should attempt to ryse in armes,

which was accompted the more probable reafon of the two. (See the continuation of this storie, anent the bond and Western expedition, in my other manuscript, pag. 167, *et seqq.*)

WINTER SESSION, 1677.—*Primo Novembris* 1677.—The Lords fell A. fol. 302,
No. 644.
upon some Acts of Sederunt, 1^o, Discharging all solistations to be made to
the Lords of Seffion by the parties their Advocats, &c.—Some named
Tolquhon, and his brother Thomas Forbes, as they who gave principall
occasion to the making this A& against solicitations. 2^d, [Anent the
enrolling of causes &c.] The 3^d was, prohibiting the cloak to be keeped
back at 12 howers at anies defire whatsoever.

Eodem die.—At Secret Councell, James Row the merchand was fyned A. fol. 302,
No. 645, § 1.
500 mks., and sent to prison till he payed it, for refusing to open his doors
to Robert Johnston, major to the Toune of Edinburgh, who came on the
Sunday, before the tyme of sermon, to search for conventicles, and for
upbraiding him with opprobrious language.

One Jamesone having complain'd upon the Commiffioners of the Borders
for refusing to give them up their bond of 200 lb. sterl., in caife he did
not reproduce another person, and which he had done : It was alledged,
that they did not produce the person on the day they keep'd their
Warden Court, that they had affisers and witnessses ready, and came
upon great expence from sundry places of the countrie, and the dyet was
continued throw the not presenting him then; and the offering him 2 or 3
dayes afterward was not eneugh, because they being dispersed, the summe
of the bond would not bear the cost of conveening all the parties concern'd
again. My Lord Duke of Lauderdale declared, he would suffer nothing
that might discourage thoffe gentlemen that had the truft of the peace of
the Borders concredited to them by a commiflion under the Great Seall of
both kingdomes.

28 *Novembris* 1677.—This day Captain John Rutherford, and William A. fol. 309,
Rutherford, messenger, ware hanged at the Graffe mercat of Edinburgh, No. 664.

for forging of false wryts; (see a little of it *supra*, folio 85, num. 101.) The decreet of improbation was given upon the indire&t probation in 1671, and was carried amongs the Lords only by one vote; and Sir Jo. Nisbet was so unsatisfied in his private opinion, that, tho otherwayes violent eneugh, yet suffered them all his tyme, during the space of 6 years, to ly in prifon, and had no clearneſſe to infift against them criminally for their life, and, at the moft, deſigned only banishment, and they never expeſted more. But S[ir] G. Mck[einzie] being entred, and reſolving to give the world ane experiment of his justice, and that he would purge the prifons of theſſe his predecessor had left him, because no money had been offered him to infift againſt them;—he ftages them and puts them to the knowledge of ane affife, and, *in modum probationis* to the inqueſt, produces the Lords of Seffion their decreet of improbation, who thereon find them guilty, and the Juſtiſiary Lords ſentence them to be hanged. The prisoners clamored much againſt Robert Androw, who was the great foliſter of the affair.

A. fol. 309,
b. No. 666.

29 Novembris 1677.—At Secret Councell the Lairds of Grant and M^cIntosh are fynd in 200 lb. fterl., becauſe their men, for whom they, as the heads of theſſe two clans, ware bound, had committed a groſſe ryot, in burning a houſe, &c., (which is ſtatutory treason;) and probation was led upon it, tho the defenders ware abſent; wheiras, in ordinar forme, all that uſes to be done in that caſe, is only to denounce them fugitives: yet here the Councell took probation by witneſſes, and fynd, *ut supra*.¹

A. fol. 310,
b. No. 672.

6th Decembris 1677.—The Counteff Dowager of Home, upon a ſuſplication given in by Collonell Jo. Home of Plenderghaſt to the Secret Councell, was ordained to exhibit the airesſe of Ayton, hir grandchild, the nixt Councell day, at the bar, to the effect they might feueſtrat hir in a

¹ [The fine was £200 to the King, and £100 to the pursuers, Archibald Dunbar of Newtoun, Alexander Dumbreck in Auchmadies, and his spouse. The defenders in this caſe of hameſucken, violence, and lawleſſ outrage, were headed by Alexander Grant, ſecond ſon to the laird of Ballindalloch, and Donald M^cIntosh of Innerey.—*Regist. Secr. Conc.*]

neutrall hand, in regard the Countefs was alledged to be resolved to dispose of hir in marriage, without consent of hir freinds on the father's syde. But the designe of the sequestration was to bestow hir on W^m Ramsay of Idington younger. After intimation of this order of the Councell, the young gentlewoman was conveyed away to Berwick, and their married to Home of Kymmerghame. Wheirupon a new complaint was raised against them at Secret Councell, for their contemptuous disobeying the Councell's order ; and after many dyets of probation, Joseph Johnston of Hilton, and Home of Nynewalls, ware found accessory, and on the 16 of March 1678, ware fyned at Secret Councell, Hilton in 2000 m^{ks}., and Nynewalls in 1000 m^{ks}. ;—young Kymmergeame, for the clandestin marriage, contrare to the A& in 1661, in 1000 m^{ks}., and the young lady in as much. Old Kymmergeame dyed during the dependance, and so escaped fining. Polwart's accession was not proven. The sentence farder declared, that young Kymmerghame had lost his *jus mariti*, and shee hir *jus relicte*, conforme to the 9th A& of Parliament in 1672.¹

10 Decembris 1677.—At a meeting of the Royall Fisching Company, A. fol. 311,
ane A& was made, that no merchand or other persone should have liberty No. 674.
to export herrings, or other fisches, save only the members of the Royall
Company ; and that none should have liberty to fish but themselfes, and
such as get licences from them ; and they are only permitted to fish for
serving the country, and its consumptiōn, and not to send abroad ; by
which many in Glaſgow, Dumbar, &c. will be great losers, who, by the
export of fisches on their ounē privat adventures, brought in above
400,000 marks yeirly ; and the King's customes will suffer by it. The
remedy will be, to enter unto the said Company ; only they would be
abler with £50 Sterling alone to manadge the said trade, than with £200
given in there.

Eodem tempore—The Lords of Seffion at this tyme ware thinking A. fol. 316,
No. 675.

¹ The benefit of this *jus mariti* and *jus relicte*, was gifted by the King at Exchequer to the Earle of Home, on the 20 of July 1678 : the debate will come in upon the declarator of it.

upon an act for short plaiding, to curb the long and tedious harangues in the Inner House. As also, they made ane act for ordering the taking of witnesse's and parties' depositions in the afternoon, with more order and easinesse, by excluding all parties, except the Lords' clerks, and persones deponing, from entring the Inner House, scarcely admitting the Advocats. It was a shame to see the confusione there was before, and many hearing what the witnesse said, who ought not to have heard.

A. fol. 312.
No. 683.

13 Decembris 1677.—The Toune of Edinburgh having charged, by Geo. Blair, their factor, both the toun of Aberdene, and the fischers of Glasgow and Greinock, upon their gift from the King of marking and judgynge all their barrells. Alledged against, 1°, They want a decreet conforme : 2^{do}, It's præscryved, and in desuetude ; and Edinburgh never attained possession by vertue of it : 3^o, The Royall Fisching Company exacts the same dueties from them, and they cannot pay to both : 4^{to}, For Abirdeane alledged, by the 141 A& Parl. 1584, they have a right to it themselves ; and it is contained in all their infestments since. (See the answers to thir, both in the information against the Magistrats of Abirdene, and in the information against the fischers in Greinock, &c.)

A. fol. 314,
b. No. 704.

7th 8th 9th and 10th dayes of Januar 1678 Mr. James Mitchell was upon the pannell at the Criminall Court, for shutting at the Archbisshop of S^t Androis. He was sentenc'd on the tenth, and hang'd on the 18th of January theirafter.¹ The law that reached his life, was the 4th A&t of the Parliament 1600, against invading and pershuing of Councillors, tho it was only made *ad terrorem*, and in desuetude, and never practised as to the paine of death, for otherwayes, *conatus fine effectu consummato nunquam punitur capitaliter*. There was much debate anent the way of proving the qualification of the said A&t of Parliament, that the Archbisshop was invaded for doeing his Majestys service ; for that being

¹ See the extracts of the full debate as it stands recorded in the Books of Adjournall, insert in another MS., (C.) at pag. 53, *et multis sequentibus*. [See foot note to page 186.]

animi, can only be spelled out by *præsumptions*. Mr. John Waus, in his oath, was more positive then any other for proving this; for he declared, that having asked Mr. Mitchell, how he could adventure in cold blood to affafinat a man, especially a churchman, and one who had never wronged him, he answered, " And call you that cold blood, when the blood of the faints," (meaning thosse execute in 1667 for the rebellion 1666,) " is yet reeking hot at the Croce of Edinburgh?" The Justices found it was not eneugh to prove the assaulting a Privy Councillor, but the qualification of the A&t of Parliament behooved likewayes to be proven. As to the demembraiton of the Bisshop of Orknay, it was alledged the 28 A&t, James 4th, *anno* 1491, makes it not capitall. The Advocat, Sir George Mackenzie, at laft declared he past *pro loco et tempore* from the demembraiton, in fo far as it might import *ultimum suplicium*; then alledged, he was not guilty of *affassinum*, because Carpzovius, in his *Praxis Criminalis Saxonica*, shows that cryme is only committed by one who is hyred with money to kill another. (See the Advocat's oun Criminalls, *Tit. affassinum*.) Then he denied the fact; as also his former confession, as also revoked it as extrajudicall, and not being made before the Judge competent, viz. a quorum of the Justices and the Affise, but only before some Councillors; and so it was not binding but null; and cited Boffius his *Practica Criminalis*, Julius Clarus, and Ant. Mathæus, in their criminalls, and the Advocat's oun book of Criminall law; and Craig *feudorum*, pag. 38, shows the Secret Councell cannot judge of life or fortune.—The Lords of the Jufticiary found the confession, being emitted before the Duke of Lauderdale, being then the King's Commifſioner, and the Committee of the Councell was judiciall, and that it could not be retræted by him. Then alledged, it was a confession elicit by torture, and so revockable. This was repelled, because when he confest, their was nather torture nor threats adhibit. Then he founded on a promise of his life. This the Advocat debated againſt as not relevant. The Lords sustained the promise of life relevant. Then the witneſſes ware examined; the greateſt that ever appeared in a criminall caufe with us: The Duke of Lauderdale, the Chancelor, the Archbifchop of S^t Androis,

Bisshop of Galloway, Halton,¹ Sir John Nisbet, (but he was not examined.) They declared they hard him confess, and denied they knew any thing of the promise and assurance given him for his life. The pannell entreated the Chancelor to remember the honour of the family of Rothes, and to mind, that he took him by the hand, and said, “*Jacobe, man, confess, and as I am Chancelor of Scotland, ye shall be safe in liffe and limb.*” All the Chancelor returned was, that he hoped his reputation was not yet so low, as that what the pannell said, ather there or elsewhere, would be credited, sinc he had sworne. The pannell stll averred the contrare. The Archbisshop, on oath, likewayes denies any promise of life, saying, It was not in his power to grant remissions. Nicoll Sommerville the agent, brother-in-law to the pannell, boldly contradicted him, and bid him remember such and such tymes and words, and seemed to make his narration very probable. The Archbisshop fell in a mighty chaff and passion, exceedingly unbeseeching his station, and the circumstances he was then stated in, and fell a scolding before thousands of onlookers. Nicoll yeeldeed in nothing; and after the Archbisshop had sworne, he cryed out, that upon his salvation what he had affirmed was true; which was to accuse the Archbisshop of downright perjurie: but it was overlooked, because *justum dolorem temperare non poterat*; and the misfortune was, that few there, but they believed Nicoll better then the Archbisshop. Then Sir George Lockhart and Mr. John Eleis, advocates for the pannell, produced ane A&t of Secret Councell, bearing, that they revoked the assurance of life given him, because of his disingenuity. This the Duke of Lauderdale stormed at, and told he came in obedience to a citation upon his Majesty’s letters of exculpation, to depone, but not to be staled for perjurie. The Justices repelled the said a&t as not probative, and because not produced *debito tempore* before the said noble witnesses ware sworne; and because it was clearly redargued and convelled by the depositions of the Privy Councillors denying the same. Yet the princi-

¹ See the Manuscript E. in 1681, pag. 212, wher Halton is accused of perjurie for deponing in this cause.

pall was written by Hew Stevinsone, margined and interlined in sundry places by Sir John Nisbet, the King's Advocat ; and they abstracted the books, and would not produce them, *et magis credendum Clerico in actibus officii quam Judici* ; and it choaked the principles of both criminall law and æquity to say it was too late, for *nunquam in criminalibus concluditur contra reum*, anie tyme before the enclosing the Affise. And it was thought strange they startled so at it, since they saw it and heard it before they came there ; and it struck many with no small amazement to see that act denied by the Chancelor, &c., for it's generally yet believed there was truely such a thing ; and it was freely talked, that if such tripping had fallen among mean persons, it would have been hyely censured.

And thus they hunted this poor man to death ; a prey not worthy of so much pains, trouble, and obloquie as they incurred by it ; and some of their oun freinds and weel-wishers desired they had never dipt in it, but only keipt him in perpetuall imprisonment ; for it made a wonderfull noice in the country, who generally beleived the law was stretched to get his neck stretched ; and they feared preparatives : and satyres, and bitter verles immediatly flew abroad like hornets, in great swarmes, which ware careffed, and pleasantly received ; speaking much acrimony, and ane almost universall discontent. Sir George Lockhart defended him with admirable strenth of reason and expression ; but he would not communicat councells with Mr. Eleis, though commanded to it by the Lords ; and some thought his late producing that A& of Secret Councell was ane oversight ; others judged it a designe to entrap the Duke and the other witnessses, and to reflect on them. The debate¹ in the Adjournal books weill deserves reading, for it was one of the most solemne Criminall tryalls had been in Scotland thesse 100 years. Halton deponed that he confessed to him, he lurked that night, after he had shott the pistoll in Sir

¹ [This Debate is given at length by Fountainhall in his MS. marked C ; and is inserted, at page 281, as Appendix, No. III., in the volume of "Historical Observes of Memorable Occurrents," &c. printed for the Members of the Club. But the whole circumstances and allegations are here given in the text.]

A. Primrose (then Register) his yaird, with one Canon of Mondrogat, &c. He was but a simple, melancholy man, and owns the fact, (in the papers he left behind him,) as ane impulse of the Spirit of God, and justifies it from Phineas killing Cosbi and Zimri, and from that law, Deuteronomy [chap. xiii.] commanding to kill false prophets that seduced the people from the true God. This is a dangerous principle, and asserted by no sober Presbyterian.

On the scaffold they beat drums when he began to touch the Chancellor. They say Major Johnston undertook to stab him, if he had attempted ane escape, or any had offered to rescue him. The Secret Councell would have given him ane repravall, if the Archbischop would have but consented. Of his confession, whether judiciall or extrajudiciall, *vide supra Decembris 1674, folio 236 in calce, et 237,* wheiras the King's Advocat likewise libelled on the [4th] A&t Parliament 1670, declaring the assaulting of churchmen to be death,—(for the A&t in 1633 imposes only ane arbitrary punishment in such a case:)—It was answered, the said A&t was posterior to the fact, which was done in July 1668, and so could not reach. Wheiron he passed from thesse two A&ts as to death not being declaratorie laws, and insisted on the A&t in 1600. (See many papers relating to this affair besyde me.)

It was judged ane argument of a bad deplorat cause, that they summoned and picked out ane assayse of souldiers under the King's pay, and others who, as they imagined, would be clear to condemne him.¹

A. fol. 315,
No. 706.

11 Januarij 1678.—At Exchequer, Sir Jo. Nisbet was found liable in 4 tb. Scots yeirly as the castle-waird duety payable for the Castle of

¹ The clerk of the Court, M^r Robert Martin, was desired to have been led as a witness, but the Justices waved him, being a member of the Court. There ware objections against sundrie of the Assisers, as *proditio testimonij vel potius judicij, &c.*

Doctor Irving and John Jossie ware most unwilling to depone upon oath on the quality of the wound, alledging a privilege or exemption to their profession; but they ware not dispensed with, and it's like they had been imprisoned if they had absolutly refused. If he did not shoot the pistol, yet he deserved death, (as Mr. Hicks suggested to the King's Advocat,) because he boasted he was the doer of it, and that by David's decision, 2^d Samuell chapter 1, ver. 16.

Dirleton, and contained in the chekher rolls. There was only 6 schyres towards the south, and bordering on England, that had thesse castle-wairds. Dirleton alledged, Thesse lands, by Gowrie's forfaultor, being annexed to the King's croun, and theirafter given out to the Earle of Kelly free and without mention of any such duety, it was theirby discharged; which defence the Lords repelled.

24 Januarij 1678.—This day the King's host at Striveling randevoused; A. fol. 316,
the Hylanders, Perthshire heritors, Militia of Angus, standing forces, No. 708.
&c., making upwards of 8000 men. Of their expedition to the West, of
the Bond, Lawborrows, and other consequences of that affair, see a full
account in another manuscript book, *folio 167, et seqq.*¹

25 et 26 Januarij 1678.—Thir two dayes ware wholly consumed almost A. fol. 316,
in the Inner-House, (yea they late till one a'cloak, which some affirmed
unlawfull,) in advising the Duke of Lauderdale's action against the Earle
of Twedale, about the teynds of Pinky, within the lordship and regality of
Muslebrugh, in which their ware three points; one of the tack, another
of the hæretale disposition, if it was annexed property, and the third was,
if it was præscryved, since, in the English usurpation the Duke of Lauderdale
was *nec valens, nec volens, nec potens agere.*

6^o Februarij 1678.—Four Ægyptians, of the name of Shaw, ware this A. fol. 316,
day hanged, (the father and three sones,) for a slaughter committed by them
of one of the Faws, (another tribe of thesse vagabonds, worse than the
mendicantes validi mentioned in the Code,) in a drunken squabble made
by them in a randevouz they had at Romanno, with a designe to unite
their forces against the clans of the Brouns and Bailzies, that ware come
over from Ireland, to chasse them back again, that they might not share
in their labors; but in their ramble they discorded, and committed the

¹ Most of the Acts of Secret Councell this winter concerned this Western Expedition, which I omit here because collected elsewhere; as also the passages of Kilferan and Doctor Lesly, which see *alibi; item*, the Act against Protections, *infra, folio 321, in calce.*

forlaid murder, and sundry of them of both sydes ware apprehended. Thir four, being throwen all unto one hole digged for them in the Grayfrier churchyard, with their cloaths on, the nixt morning the youngest of the 3 sones, (who was scarce 16,) his body was missed and found to be away. Some thought, he being last throwen over the ladder, and first cut doun, and in full vigor, and no great heap of earth, and lying uppermost, and so not so ready to smother; the fermentation of the blood, and heat of the bodies under him, might cause him rebound and throw of the earth, and recover ere the morning, and steal away; which, if true, he deserved his life, tho the Magistrats or their bourreau deserved a reprimand. But others, more probably, thought his body was stollen away by some chirurgian or his servant, to make ane anatomicall dissection on, which was criminall to take at their own hand, (*vide titulum de sepulchro violato,*) since the Magistrates would not have refused it; and I hear the chirurgians affirme the toun of Edinburgh is obliged to give them a malefactor's body once a-year for that effect; and it's usuall in Paris, Leyden, and other places, to give them also some of them that dyes in hospitalls.

On the 13 of Februar 1678, one of the Faws, called Robert Faw, being convict of having killed one Young, a caird or tinker in Aberdene, was also hang'd tho the probation was very slender, the witnessses not deponing positively he was the very man; yet it was thought sufficient against such cattle, for the being a knownen *Aegyptian* is death by our A&ts of Parliament. He dyed affirming he was not in the country the tyme of that murder; for they had been tane two years ago peiking, and sent away with the French officers, but returned. The rest of this tribe and band the Justices banished the kingdom, never to returne under the paine of death.

A. fol. 321,
No. 734.

About the 9 or 10 of March 1678, Mr. Patrick Home, advocat, per-
suaded Sir Androw Ramsay of Waughton, at Secret Councell, for debarring
his tennents of Fosterland from fisching at Auld-Cambus, and taking their
boat from them. It might have been alledged (but it was settled without
a hearing) that what he did was warrantable, the said Mr. Patrick having
no right, but intruded himselfe *vi clam et precarie*; that he had no way

to the sea but throw Sir A's ground, that he could not lay out his boat but upon his private harbory, and he had not as yet præscryved a servitude in ather. And he was content if Mr. Patrick did shew the leist right to fisching, then to restore him. Yet we say, *spoliatus ante omnia est restituendus.*

14 Martij 1678.—The Lords of Secret Councell declared the flieng to A. fol. 321,
the Abbey should not defend any that ware owing to the King ather for No. 735.
excise, custome, feu-duties, &c. But if we please to goe farder, we shall
find the Abbey of Halirudhouse was made a girth and san&tuary ; because
when the King was their in persone, it had been most improper their
should be any disturbance by executing captions, &c. ; since, under that
pretence, traitors might convocat against his Majestie's oun person ;
ergo, cessante ratione legis it ought not to protect against the King's
rebells when he is absent, and their is no such inherēnt sanctity due to
the place ; and, upon this ground, is founded the ratio of the 173 A& of
the Parliament 1593, against wounding persones in the King's oun
palace or chamber, he being present. (Yet see this relaxed by the 1 of
the Maccabees, 10 chapter 43 verse : see a 4to. law manuscript, pag. 46.)

Protections granted to debtors, called in law *supercederes*, and *re-*
scripta moratoria, is another grievance ; and my Lord Duke of Launder-
dale, in Januar 1678, in peek that he was outvoted in a prote&ion by
Seaforth and Sir George Kinnaird, caused make a most strict and severe
A& against protections ; albeit he was told their was alreadie ane A& of
Parliament in 1663 against them.

2^{do} Maij 1678.—Two witches having confessed at Salt Preston, upon A. fol. 322,
ane addresse, the Councell granted a commission to Preftongrange, S^t No. 737.
Germains, and Colstoun, (for the Duke of Lauderdale excluded Mr.
John Preston, as one inclined to burn too many for witches,) to try
and judge thesse witches, who had confessed, but not thesse whom they
detested and blackened. Thir two, on their confession, no wayes extorted,
ware burnt.

28th May 1678.—ANENT THE CONVENTION OF ESTATES IN JUNE 1678.

[This Account of the Convention 1678, which concludes the folio volume marked as MS. A, has already been printed as the Appendix, No. II., in the HISTORICAL OBSERVES OF MEMORABLE OCCURRENTS, &c. By SIR JOHN LAUDER of Fountainhall, Baronet. Edinburgh, 1840, 4to.]

FOLIO MANUSCRIPT E.

SOME DECISIONS OF THE LORDS OF SESSION, FROM JUNE 1678, TILL THE FIRST OF NOVEMBER 1683.

*Jurisprudentiae antequam Christiana fuit, hæc erant eximia præcepta;
Honeste vivere, alterum non lædere, jus suum cuique tribuere.*

The folio law manuscript marked with the letter A, being now full, I begin heir at the Lords Decisions wheir it left, viz. at June 1678. See a continuation of thir Observes in another folio law manuscript marked A 13, beginning at November 1683, wheir this book ends.

I HAVE marked the following Decisions only for my ounе use, and some of them will not be understood so easily by thoſſe who ware not in the causes, for I have oft tymes, for my ounе memorie, only ſet doune the interlocutor, without ather the caſe or the debate; in regard I ather remember wheirupon the interlocutor proceeded, or elſe I have ſomewhat of it obſerved in ſome other manuscript, or the Informations of it beſyde me; not having leiuſe to be guiltie of repetitions; and thir imperfit memoires will ſerve as helps wheiron to draw them afterwards at length *in mundo*.

Their is alſo ſundry Observes and Decisions of the Privy Counſell, Juſtice Court, and Exchequer, &c., with ſome Historick remarks heir and their, intermingled ſhortly, because I have a folio Historick manuscript apart.

SUMMER SESSION 1678.

10 and 11 Junij 1678.—James Gray Litster in Dalkeith was pannelled, E. p. 2, No. 3. found guilty, and sentenced to dy, for the slaughter of Archbald Morray, sone to the Laird of Neuton. The occasion of the quarrell was, in winter last, when the King's army was in the westren shires, Archbald was their as one of the King's life-guard; the Mid Lothian Militia regiment being also sent thither in March last, this James Gray was a lieutenant in one of the companies of that regiment. They drinking togither one night at Glasgow, and being warme with win, they fell to words; James said a lieutenant to the Duke of Lauderdale was as good as to ryde in the King's guard; Archbald storm'd and call'd him a base fellow to compare himselfe with gentlemen; and so went out togither: and James Gray came back to the company, and being intoxicat with anger and drink, boasted I trow I have pricked him, but never imagined he had killed him. Being apprehended, the probation led against him was a boy of 16, and some other witnessses, who heard him emit that extrajudicall confession that he had wounded him; as also thosse who ware at Archbald's buriall and saw the wound, *ut confaret de corpore delicti*, and the chirurgeon and others who saw the fword tane from the pannell, and that ther was blood on it, and being compared with the wound and its orifice, (and the fword being present in Court,) they deponed the wound appeared to have been given with that same fword. Upon thir presumptions, the assyse found him guilty of the slaughter of the said Archbald. The pannell still denied it: some excused him as if he had truely forgotten. He was a pretty fellow, and was stout. Endevors was used for saving his life and banishing him. A bill given in to Secret Councell repreived him for a moneth and recommended to the Lords of the Justiciary to reconfider the verdict, if it proceeded on rationall and just grounds: They say 5000 mks. was offered to the freinds in name of assythment, but report

being made to the Duke of Lauderdale, he refused to medle in procuring him a remission ; so that on the 19 of July 1678, (after the poor man was put in some hopes of life,) he was headed. He died with more couradge then could be justly expected from one of his education ; he confess his vanity and pride, his mind ever aspiring to things far above his fortune and quality in the world, which engadged him in discontents, quarrells, &c., and which ware hightened and augmented by his marrieng an old woman, &c. It was urged for him the confession proven was meerly extrajudicall, and he was not presumed to be the aggressor, he being but a tradisman, and old, neir the age of 50 ; the other a gentleman, and young, and knownen to be ramp.

E. p. 15, No. 26. 20 *Jully* 1678.—The Lords having this day advised the proces against James Dumbar, messenger, for paying the debt because he had suffered the Earle of Morton to escape, (see it in another manuscript at the 27 *Novembris*, 1677, pag. 7;) the Lords affoilzied the said James, because the employer, George Drummond, being present with the messenger, did not bring halberdiers from the toune's guard to assist the messenger, which he might have done, being within the toune of Edinburgh, and at the Croce, so neir to the court of guard.

20 *Jully* 1678.—This day, at Exchequer, Kymmerghame's *jus mariti* of Ayton was gifted to the Earle of Home. See 6 of December 1677.

E. p. 15, No. 28. 24 *Jully* 1678.—At Secret Councell, books ware ordained to pay custome, as weell as other goods, in regard the tacksmen pretended they could not pay their duety, if they ware made free. Yet formerly they never payed, and yet the customers payed their tack duety ; only they ware alwayes reclaming. The Stationers have given in a petition at Secret Councell, seeking a rectification of this. The Councell, at the instance of the relict of Androw Andersone, who had the gift for so many years of being his Majestys printer, discharged the other presses in Scotland for printing, except such as acknowledged hir; wheirof redresse is likewayes fought.

25 *July* 1678.—At Secret Councell, bailzies of barronies and regalities E. p. 17,
ware ordained to take the Declaration, as well as bailzies of borrows-
royall ; albeit the 2d Act of Parliament in 1663, mentions only magistrats
of borrows, which seemes to mean only borrows-royall, as *famofius anal-*
ogatum ubi simpliciter exprimitur, but they extended it also to the other.

27 *Julij* 1678.—One having taken two chartors from one who disponed E. p. 18,
lands to him, one to be held *de me* of the annalziar, another to be held
a me from the disponer of his superior ; and, being infect both *a me* and
de me, and having brought both his chartors and infections to a wryter
in Edenbrugh to get the base holding confirmed by the Exchequer, the
wryter, most ignorantly and ridiculously, confirmed the chartor *de me*
and it's infection, wheiras the only right that ought to have been
confirmed was only the base infection *a me*, which was null in it selfe
and *de jure*, till it was confirmed and acknowledged by the superior.

30 *Julij* 1678.—At the end of this summer seffion, fundrie complaints E. p. 19,
ware exhibited against Mr. John Hay of Hayston, one of the upper clerks No. 41.
of Session, upon malversation in his office, for getting him removed their-
from. See it among my Seffion occurrents.

At the same time, Patrick Cockburne of Borthwick was sent for to be § 2.
apprehended, being delated by one Thomas Roheid, as having spoke
basely of the Dutchesse of Lauderdale.

Their was also criminal letters directed against Mr Thomas Urquhart, § 3.
minister, as having had acception to Cromartie's death, who was *felo de se*.
Not like Saull's armor-bearer, but rather like the Amalekite : See 1
Samuell, last chap. and 2^d Samuell, 1 chapter.

5th *Sextillis seu Augusti*.—The Duke and Dutchesse of Lauderdale parted § 4.
from Edinburgh for London.

5th *Augusti* 1678.—Robert Nairne, servitor to my Lord Strathuird, im- § 5.
prisoned and fyned in a 100 m^ls. by the Secret Councell, and that for
beating and injuring William Crawfurd, servant to my Lord Advocat.

E. p. 19,
No. 42, § 1.

9th 10th and 11th of September 1678.—At the Criminall Court, thir dayes are brought in the affairs following: *Imprimis*, M^cDougall of Garthland was pannelled for this treasonable expreſſion,—“ That the King and the Duke of Lauderdale defigned to eſtablish arbitrary governement, and that every true-hearted Scotsman was oblidged to oppose their inbringing of the ſame.” The dyet was deſerted, but there is new letters raiſed againſt him. The reaſon of the King’s Advocat’s not iñfifting, was ſaid to be, that the ſervant of Mr. Row the miňter, who informed, was a little tampered with, and pretended he remembered not what he heard, and yet he was a neceſſarie witneſſe. 4 *Novembris* 1678 it was again called againſt Garthland, on a new libell; but nather witneſſes nor affifers being preſent, the dyet was for the ſecond time deſerted.

2^{do}. One Temple, and one James Leirmont and his brother, ware all three pannelled, for being art and part of the murder of John Hog, who came with a part of the King’s forces from the Baffe in May laſt, to diſſipate a Conventicle met beſyde Whyt Kirk, wheir the ſaid John Hog was killed by the Conventiculars; (vide *infra*, p. 325.) The Criminall Lords found it relevant againſt them, to make them art and part of the slaughter, and guilty of death; that aither they ware preſent at the ſaid Conventicle wheir the man was killed, with a ſword, piſtoll, or other weapon about them; nather would they require that it ſhould be proven that the ſword was drawen, or the piſtoll in their hand, but found it ſufficiently relevant that they had ſuch weapons about them, because they ware *in actu illico*; they ware preſent at a feild Conventicle, which the laws of the kingdome hes declared, to be rendevouzes of rebellion, and ſo, *verabantur in exercitio rei illicitæ*, and became anſwerable for the enormities that followed. Or 2^{do}, found it relevant that they ware preſent, though they wanted weapons, if ſo be they uſed thir or the like encouradging words to their oune party before the slaughter was committed:—“ Doe not fear, we are far above their number; ſee their be no cowards here to-day; and yee that hes armes, and are on horſeback, goe to the foirſyde:” And fand the uttering of ſuch words, ware ane acceſſion as airt and part to the ſubſequent murder, and æquivalent to a mandat and command. By the probation it appeared, that Temple was there preſent with a ſword under

his arme, but it was not drawen. And it was proven againt James Leirmont, that he was their upon horseback, and that he rode up to the King's party that came from the Basse and North Berwick and viewed them, and then rode back to his oun party again, and uttered to them the forsaid words. But it was likewayes proven that the said James had no weapons, but only a wand in his hand; that one Cowan killed the fojor, by thrusting his halbert in his belly, and that he lived some fix howers after, and then they saw him dead, and was at his buriall. This was proven, *ut constaret de corpore delicti*; (some thought the wound might have [been] cured, if a chirurgian had come in time,) and that James, the tyme of the slaughter, was at some distane from the place wheir the slaughter was committed. Notwithstanding of all which, he was execute for it. The Affise being enclosed, one Bull, a wright, was ele&ted their chancelor, and the first verdi&t they returned was, that they found them guilty of being present at a feild Conventicle; but the Advocat, the Archbishop of S^t Androis, and the Justices, being very disatisfied with this impertinent returne, they ware commanded back, and reinclosed (after they had gone abroad) to amend their verdi&t. The second tyme they came out, adhering to the former. They ware thrust in the third tyme, and threatned by the Advocat with an Affise of Error if they corre&t not their verdi&t. At last they returned by their verdi&t that they ware both guilty. Wheiron the Justices superceeded sentence against Temple till November; and it's thought they designe only to banish him; but James Lermont they sentenced to be headed at the Graffe Mercat on the 27 of September; which was accordingly done: see the copie of his speach.

The two branches of the Justices interlocutor, alarumed many, and gave great occasion of discourse, as being thought ane terrible streach of what formerly was esteimed law, and a great shake to the security of mens lives and fortunes, and a most arbitrarie decision. And as to the first part of it, our law concludes all it finds with cold steile (that is, with a drawen fword) in their hands, guiltie of the slaughter; but that the being casually present *ubi in rixa homicidium est commissum*, and having a fword or pistoll, but not drawen, was sufficient to inferre art and

part, was *inauditum* till now. For what if it be a man that uses never to goe abroad, or ryde, without a sword, as all gentlemen, and even burgers and the better sort of tennents use to doe, shall that make them liable and guilty? But the knack wheiron they justified this decision was, that presence at a Conventicle, which is *locus et actus illicitus*, with a sword or other weapons, though he be not *in actu proximo*, and threatening with them, was accession enough, if homicide happened there. And the State designe of the interlocutor was, to discourage all field Conventicles, but especiallie to fright them from coming to them with weapons; for by this interlocutor, if a man be killed at ane Conventicle, if five hundred be their with swords about them, without any other accession but their naked presence with weapons, they are all guilty of death. But if a man fall in accidentally amongs them, in armes, but had no purpose of being present at the Conventicle, or for hearing the sermon, but curiosity drew him to see what it meant, I think such a presence as that being proven, would affoilzie him from the guilt. As to the accession of being present where a murder is committed, see it elegantly reasoned in my other folio Manuscript in October 1674, in Setone of Carriston's case, its *numero* 450, and folio 235, *et seq.* As to the 2^d part of the interlocutor, which concerns Lermont, 1°, It was thought the words wheiron he was found guilty, might weell have admitted another fence and interpretation; and that all he meant was allenarly, that they might capitulat to get of Mr. John Rae the minister, and themselfes, and not that he incited them to offer the leift violence and offence, especially fince it was fully proven the slaughter was done by another; and in crimes *probationes debent esse luce meridiana clariores*, and words are not to be stretched, but rather to be impropriated, *ad evitandum delictum*, and that his *anteacta vita* spoke him to be of a peaceable temper, and the words ware dubious, and might admit a favorable fence, and *odia sunt restringenda et dolus in maleficijis non presumitur, et animus et propositum* is what makes it criminall, which seemed not to be heir; besydes words importing command should be very clear: yet see Mckeinzies Criminalls, pag. 144, what they sustained in David Hamilton's case; and heir also it might have been alledged that the principall slayer should be discust before the accessories,

yet the contrare was found by the Justices in March 1671, in the case of Charles Robertfone and his two sones ; see it in Mck's plaidings, pag. 207 and 220, item in my collection, 9 *Martij* 1671, folio 94, *et seq.* : and heir the dittay was not raised against the principall, nor was he present, but had fled. The other thing complained of in this procedor was, that the assisers ware twyce or thrice enclosed, though they had brought out their verdict, which seemes contrare to the 91 A&t of the Parl. in 1587 ; and accordingly on the 30 of Jully 1677, in the case of one Cunyghame, cook to the Earle of Kinghorne, the Lords refused to reinclose the Assise ; Yet if assisers should returne ane inept and unformall verdict, why should they not be reinclosed to mend it ? see Mck. *supra*, pag. 504, *vide infra*, page 40.¹

Eodem, 9, 10, et 11 Septembris 1678.— Thir dayes eight or ten E. p. 21.
witches, all (except one or two) poor miserable like weemen, ware pan-
nelled, some of them brought out of Sir Robert Hepburne of Keith's
lands, others out of Ormiston, Crichton, and Pantcaitland parishes. The
firſt of them ware delated by theſſe two who ware brunt in Salt Preston
in May laſt, and they diuulg'd and named the reſt, as alſo put forth
ſeven in the Lonhead of Lefwaid; and if they had been permitted,
ware ready to fylle by their delation ſundry gentlewemen and others of
faschion; but the Justices diſcharged them, thinking it ather the pro-
duct of malice, or melancholy, or the devill's deceipt, in repreſent-
ing ſuch perſons as preſent at their feild-meetings, who truely ware
not there. Yet this was cryed out on as a prælimiting them from diſ-
covering theſſe ennemis of mankind. However, they ware permitted to
name Mr. Gideon Penman, who had been minister at Crichton, and for
ſundry a&ts of uncleannesses and other crymes, was deprived. Two or

No. 43.

¹ Now, by the act and proclamation of Secret Councell, dated 13th May 1679, the being in
armes at field Conventicles is declared treason, (for the Councell cannot make treason,) and that
conforme to the 83^d Act, and Act 75 Q. Mary in 1563, the 5^t Act in 1661, and the 2^d Act in 1662,
and the other laws diſcharging the convocating the leigdes in armes; which Knox, in his History,
showes was objected to him and to the Lords of the Reformation, and he answereth it *libro 4^{to}*,
page 368, *et seqq.*

three of the witches constantly affirmed that he was present at their meetings with the devill; and that when the devill called for him, he asked, wheir is Mr. Gideon my chaplain? and that ordinarily Mr. Gideon was in the reer in all their dances, and beat up thesse that ware slow. He denied all, and was liberat upon caution. They declared and confessed the first thing the devill caused them doe, was to renonce their baptisme; and by laying their one hand on the top of their head, and the other on the sole of their foot, to renonce all betuixt the two to his service: That one of them was at the tyme with child in fornication, and, in hir refigation, shée excepted the child, at which the devill was very angry: That he lay frequently with them, and kisst them, but was cold, and his breath was like a damp air: That he cruelly beat them when they had done the evill he had enjoyned them; for he was (said they) a most wicked and barbarous master: That he adventured to give them the Communion or Holy Sacrament, (I remember in 1670 we heard that the devill appeared in the shape of a minister in the copper-mynes of Sweden, and attempted on the same villanous apery:) the bread was like wafers, the drink was sometymes blood, and other tymes black mosse water: That he preached, and most blasphemously mocked them, if they offered to trust in God, who left them miserable in the world; and nather he, nor his sone Jesus Christ, ever appeared to them when they called on them, as he had, who would not cheat them: That sometymes he transfromed them in bees, in ravens, in crows, and they flew to such and such remote places; which was impossible for the devill to doe, to rarefy the substance of their body unto so small a matter. Some thought he might take away their spirit and convey it to thesse places, leaving their body behind, but this ware to give him the power of resurrection of the dead; for death is nothing but the removal of the soull from the body, which being once done, it's not in his power to reunite them; so that all he deludes them by, is in representing such and such ideas, shapes, and objects to ther fancy and imagination when asleep, and in our sleep we will have very lively conceptions of things; only in thesse diabolique transports their sleip is so deep, that no pinching will awake them scarce. Thir confessions made many intelligent sober persones stumble much what faith was

to be adhibite to them. Ther is a storie told of one who, in King James the 6t's time, was proceſſed as a witch, because a Scotsman being troubled with a disease in Italy, and craving a magician's help and cure for it, he was told he needed not have come ſo far from home, for their was one in Scotland could cure it, and gave him his marks. After ſome years, being returned, on the bridge of Erne, he met one to whom all the marks did quadrat; to whom having imparted the caſe, he cured him by application of ſome ſimple herbs. This coming abroad, he is accused of necromancie, and compact with Satan, and found guilty, though he alledged that the cure was naturall, and he would teach any of them to doe as much; and that the devill's naming him could not make him guilty, elſe it ſhould be in his power to ruine and destroy the moſt innocent and godly perſones. As for the rencountre betwixt Mr. Williamſone, ſchoolmaſter at Couper, (who heſ writ a grammar,) and the Rosicrucians,¹ I never truſted it till I heard it from his oune ſone, who is preſent miſter of Kirkcaldy. He tells, [that] a ſtranger came to Coupar, called for him; after they had drank a little, and the reckoning came to be payed, he whifled for ſpirits. One in the ſhape of a boy came, and gave him gold in abundance. No ſervant was feen riding with him to the toune, nor enter with him into the innes, &c. He caused his ſpirits againſt nixt day bring him noble Greek wines from the Pope's cellar, and tell the frescheſt news then was at Rome; then tryfted Mr. Williamſone at London, who met the fame man in a coach neir to London Bridge, and who called on him by his name: he marveled to fee any know him their; at laſt he found it was his Rosycrucian. He pointed to a taverne, and desired Mr. Williamſone to doe him the favor to dyne with him at that houſe; whither he came at 12 a'cloack, and found him and many others of good faſhion their, and a moſt ſplendid and magnifick table, furniſh't with all varieties of delicate meats, wheir they are all ſerved by ſpirits. At dinner tyme they debated upon the excellency of being attended by ſpirits; and after dinner they propoſed to him to affume him unto their ſociety, and make him participant of their happy life; but among the other conditions and qualifica-

¹ See a title of Rosicrucians in a 4^{to} historick manuscript, marked A. 3, *pagina* 50.

tions requisite, this was one that they demanded, of his abstracting his spirit from all materiality, and of abandoning and renoncing his baptif-
mall engadgements. Being amazed at this proposal, he falls a praying,
wheirat they all disappear and leave him alone. Then he began to for-
think what would become of him if he ware left to pay that vast reckon-
ing, not having so much on him as would defray it. He calls the boy,
and asks what was become of thesse gentlemen, and what was to pay?
He answer'd there was nothing to pay, for they had done it, and ware
gone about their affairs in the city. Some said he was left in a jacks, but
this relation above named, his sone, affirmed to be of truth. As for ap-
pearances, by which the devill has actuated dead bodies and made them
move, see of Cornelius Agrippa and many others, some very odd stories
recorded by Del Rio, in his *Disquisitiones Magicæ*, though Gab. Nau-
dæus, in his Apologie, indevors to wash Agrippa's face very clean, and
to justify both him and the rest from the imputation of magick. Their
was on or tuo of them that denied, and so ware set at liberty; nine of
them upon their confession, (and so seimed very rationall and penitent,)
ware sentenced to be strangled and then brunt, which was shortly after
execute upon five of them betuen Leith and Edinburgh, and the other
four ware burnt at Painston¹ neir within their own parish wheir they had
lived. The Secret Councell gave a commision to Sir John Nicolson,
John Clerk of Pennicuick, John Johnston of Polton, and Mr. John
Preston, Advocat, to judge thesse seven who ware defamed for witches in
the Lonhead, whom I spoke with.

Eodem, [10 Septembris 1678.]—At Secret Councell on Catharin Liddel exhibited a complaint against ——— Rutherford, baron bailzie, to Morison of Prestongrange, and against David Cowan in Tranent, beiring that they had seized upon hir ane innocent woman, and had defamed hir as a witch, and detained hir under restraint as a prisoner; and that the faid Cowan had pricked hir with long prins in sundry places of hir body, and bled hir, and tortured hir most cruelly. The defences ware, that

¹ There is a hollow still called the Witche's Syke. E.

shee was dilated by other witches, and that *mala fama laborabat*, and was theiron apprehended, and yet so kindly used as not to be thrust in any public prison, but keip't in a private house ; that shee and hir sone-in-law consented that shee might be searched, *et sic volenti seu consentienti non fit injuria, neque dolus*, it being desired for the manifestation and vindication of hir innocency. As for the pricker,—1^o, He learn'd his prentifship and trade from one Kincaid, a famed pricker. 2^{do}, He never came unsent for, because he was ather called by Shireffs, magistrats of borrows, ministers, or bailzies of barronies ; so what he did was *authore prætore* ; and so *velle non creditur qui obsequitur imperio Domini, et non est in dolo qui judici obtemperat.* 3^{to}, The trade was not improbat or condemned, by any law amongs us ; and so, not being *prohibitum*, it was *de genere permittorum*. 4^{to}, All divins and lawyers who wryt on witchcraft, as Perkins, Del-Rio, &c., acknowledge their are such marks, called by them *stigmata sagarum* ; whey, then, may their not be ane art for decerning, and distinguishing them from other marks in the body. 5^{to}, *Error communis facit jus.* The Councell may restraine that way of tryall for the future, but most pardon byganes. Answered, 1^{mo}, Denyes consent. 2^d, None can validly consent to their oun torture ; for *nemo est Dominus suorum membrorum.*—As for the pricker, he was a cheat, and abused the people for gain ; and the Chancelor remembred, that he had caused imprison that Kincaid the pricker, in Kinros, for abusing the country their. The Lords of Privy Councell first declared the woman innocent, and restored hir to hir good name and fame, and ordained it to be publicly intimat the nixt Sunday in hir parosh church. They reprooved Rutherfurd, the bailzie, for his rashnesse, and discharged him to proceed so heirafter ; and found that no inferior judge, much lesse a baron bailzie, had power to apprehend, or incarcerat, or detain any of the King's liedges under restraint, upon the pretence of their being delated or suspe&ted as witches, but that they most immediatly intimat it with the first occasion, ather to the Lords of Privy Councell, or to the Lords of the Justiciary, and obtaine their warrand for the taking them. As also, found they might not use any torture by pricking, or by withholding them from sleep, &c., but reserved all that to themselves and the Justices, and thesse who acted

by commissions from them. And as a mark of their displeasure against the pricker, they commanded him to prison, their to ly during their pleasure.

P. 24, No.
45.

Eodem 10 et 11 Septembris 1678.—Their is a ryot pershued by Meinzies of Pitfoddells, and dame Anna Semple, lady liferentrix theirof, against Mr. James Thomefone of Arduthie, for a ryot committed about their marches. The Lords having tryed by witnesses, found their was a ryot, but superceded any sentence theiron till the civill part ware discussed before the seffion, wheir they had mutuall declarators of propertie depending.

P. 24, No.
46.

Eodem die.—Alexander Innes, merchand in Aberdean, gave in a complaint against the Magistrats of that toun for oppressing him, by fyning, by imprisoning, closing up his chop, and declaring his burges ticket woid. The toun had a counter-libell against him, complaining of his insolence in refusing to discover his head before the Magistrats in face of Court, tho he was no quaker, and in stirring up sedition and mutinee among the citizens, representing that the Magistrats, since the King's restoration, had lifted upwards of 200,000 mks. of the toun by way of stent, and applyed it to their privat uses, wheras they ware alwayes ready to compt and show their burgeses how profitably it was bestowed on their ministers, hospitals, &c.—their common good being most inconsiderable; so that their was a necessity for yeirly taxing the toun, and they denied that in stenting, they considered Mr. Innes for his import, and then burdene him again for the same goods when he retailed them. The Lords approved the procedor of the Magistrats in every point, and ordain'd Mr. Innes to enter his person in the tolbuith of Aberdean within 10 dayes, and their to ly during the Magistrats pleasure. This was done to encouradge and strenthen the hands of governement, especially when the opposition they met with was for adjusting the proportions of the King's assesment laid on by the last Convention of the estates.

P. 25, No. 47.

Eodem die.—At the Crimall Court, a poor woman called Knox was pannelled for having committed adultery with one Stevinson, a tennent in Strabrock, and who confessed the adultery, and that shee bore

a child, and that it lived 36 or 40 howers, and then dyed, and that shee earded and buried it at the end of the said Stevinson's barne, and the dogs senting the child, had pulled it out of the hole, and ware offering to tear at it and eat it, wheirby it came to be discovered. The King's Advocat infisted against hir likewayes for the murder, in so far as shee bore the child privily, and called no help of weemen, which shee might have gotten. 2^{do}, The man Stevinson told hir shee behoved to conceall it, else he was broken, and *de facto* he had fled. 3^{do}, Shee denied it aliment, and so *necabat*. 4^{to}, Shee acquainted none with its death or buriali. Upon thir presumptions the affise returned hir guilty both of the adultery, (which was only of a free woman with ane married man, yet it was alledged criminall pra&ctiques had extended our Acts of Parliament even to that case,) and of the murder of hir child ; which seimed hard, since they had only hir oun confession for all, and used no other mean of probation, and so in law it should not have been divided to hir prejudice, since ingenuity is to be presumed in on part of it as weell as in another : Likeas, in a woman of Dysert accused of adultery and killing the child, the conjectures ware stronger against hir then they are against this woman, and yet the affise would not find hir guilty of the murder : (See it in the other manuscript at June 1676, it's folio 245 *et seqq.*) And also the Justices, in the late case of the St. Johnston woman, who was accused of killing hir child, took most stri&t notice of the marks and nips ware on the child's neck, and referred it to midwifes and physitians to try if it was for strangling, or only got in the pangs of labor. The Lords of the Justiciary ordained this woman to be hang'd, which was done some few dayes theirafter.

27 *Septembris* 1678.—This day, Mr. John Paterson, Bisshop of Gallo- P. 25, No. way, was admitted, and sworne one of his Majestie's Privie Councill. He ^{48.} is the first Bisshop a councelor fince the King's Restoration, tho their ware Archbischops on the said Councill. And at Exchequer, the Earle of Morray was admitted and receaved one of the Lords Commissioners of the Treasaurary, being superadded to the other seven ; and both ware done upon speciall letters from his Majestie for that effect.

P. 25, No.
49.

Eodem die.—Sir George Maxuell of Newark was imprisoned in the tolbuith of Edinburgh by the Secret Councell, because, in ane insolent manner, he had refused to take the declaration in the meeting of Renfrew shire for choicing a collector of the present assessment. After he was neir out of the bar of the Secret Councell, Sir George put on his hat, for which the Chancellor called him back of new, and sharply rebuked him for offering that which the best subje& ought not to doe: He excused it with inadvertency; however, it made him ly in prison longer then otherwayes he would have done, for he was not liberat till the 10 of October; at which tyme he gave in a bill, and they sent in to the prison to see if the subscription was his, and then called for him, and upon his craving pardon, and making a faschion of kneeling, he was set at liberty.

P. 26, No.
50, § 1.

9th Octobris 1678.—Richard Maitland of Over Gogar, eldest sone to my Lord Halton, is this day admitted and sworne of the Privy Councell, conforme to the King's letter theiron.

§ 2.

This day, Mr. Charles Home, brother to the Earle of Home, for his accession in the clandestine marriage of the aireffe of Ayton to the Laird of Kymmerghame, and in disobeying the Councell's orders, and for not appearing, was imprison'd in the Castle, he having no fortune wherin to fyne him, and, after two dayes, was, at his brother's intercession, liberat.

§ 3.

Eodem die.—Eight mo[re] Conventiculars ware sentenced to goe to his Majestie's Plantations in America, or the Indies, because they would not depone upon the libell exhibited against them, bearing their refetting the intercommoned ministers, and asking who ware present with them, as they are enjoyned by the 2^d A&t of the Parliament held in 1670. Their is neir eighty prisoners all sentenced to be sent to Barbadoes, and only are detained till a ship be got to transport them.

P. 26, No.
51.

10 Octobris 1678.—The Earle of Argile, this day at Secret Councell got a commission for two companies of Hylanders, to be commanded by Lawers and Collonel Meinzies as their captains, and for a commanded

company out of the Earle of Lithgow's regiment, that they may put him in peaceable possession of the Ile of Mull; and if the Macleans and other Highlanders offer resistance and opposition against them, then they granted him a commission for fyre and sword. It was alledged this could not be directed against them, because the Macleans had a standing suspension undiscount, and till that took a termination, they ware under the security of the King's laws. It was answered, it was the Maclean's fault that had not called that suspension. Yet it seimes Argyle was as much to blame in the delay, since he might have discount it ather by a protestation or a decreet. It's thought Argile's sone's marriage will work out the affair against Maclean.¹—See the printed proclamation and A&t made on this day, for securing the peace of the Hylands, intended to gratify Argile's designe; as also the A&t at the same time made, discharging any to travell with mo persons then their domesticks in the Hylands, conforme to the old A&ts of Parliament.

6^o Novembris 1678.—Three witches brought from Falla parish, ware P. 27, N. 54. condemned at the Criminall Court to be burnt, upon their judicall confessions.

7^o Nov^{is} 1678.—Upon a bill given in to the Lords of Privy Councell, P. 28, N. 56. by Harie Barclay, baxter, against the Lord Forrester, they ordained the said Harie his debt, it having been for bread, and so alimentarie to be excepted out of the said Lord his personall protection, that it might not defend against his debt instructed by bonds and decreets.

20 Novembris 1678.—The good Toune of Edenborough *contra Mr.* E.p. 31,
Thomas Lermont, Advocate, and the remanent members of the Colledge No. 66.
of Justice, for their Annuities. Tho this cause took up 4 or 5 dayes
pleading in the Inner House, and the fame of it spred wide, yet I shall
contract it, because the minutes of the debate are to be had, and are
pretty full. I shall only touch some few of the heads I made use of, in

¹ See of this in the other manuscript the end of Jullie 1676, folio 256, *in calce et 257.*

deducing the charge, and point at the rest of the debate. It was alledged for the good Toune, That they judged it their misfortune to contend with so powerfull ane adversary as the Colledge of Justice ware ; (for the Lords had only commanded Sir George McKeinzie, King's Advocat, and my selfe, to be Advocats for the Toune,) but the justice and piety of the cause, was what ballanced thesse disadvantages : That the cause was founded in religion, for the sustenance of their ministers, for whom all nations, even the very heathens, had made by nature's light, honorable allowances ; and it is no more but just, that they should participat of our temporall things. The good Toune, with much satisfaction, had its gates alwayes open to receive in gentlemen's sones, and others, who came from all the parts of the kingdome towards this illustrious society, and were no leſſe glad to see them arrive at ſo great improvements of their fortunes. That by a bountifull reciprocation, like the circulating of the blood in our weins [veines], ſhe, as a kindlie mother ſends furth hir colonies back to the country again. Entreats them to remember Menenius Agripa's apology, by which he reduced the commons of Rome from their Aventine ſeceffion, by his witty demonstrating the bad conſequences iſhued from the diſcord betuixt the belly and other members of the body ; (fee this *alibi.*) It's hoped the lawyers, who are the priests of righteouſnes and oracles of the nation, will not praetife a *societas Leonina*, which they condemne in all other caſes. They will not take a ſhare in the benefit of the goſpell, and cause the Toune bear all the burden *quem ſequatur commodum, &c.* It's true, the teynds are the proper and naturall patrimony of the church ; (A& 10 in 1567,) but wheir they cannot be had, then the *decimæ personales ex artificio et induſtria resultantes*, and the *œdium penſiones* ſucceed in place theirof, as in brughes ; which leads us in to ſpeak of the annuities, a moderat and eafe duty impos'd upon the house maills, for help towards the ministers ſtipends. The feveral wayes how ministers ware payed, from tyme to tyme, within the Toune of Edinburgh, ſince the Reformation was publickly ouned in 1560, was heir at lenth related, the historie wheirof was gathered from the ſummarie of the Toune of Edinburgh's ſtatutes beſyde me. Then was repreſented what was the preſent ſetled and conſtant revenue and fonds, out of which the Toune payed

their ministers, and how much short it fell,—that they ware forced to encroach upon their common good, to make up the deficiency,—and that they now wanted the bischoprick of Orknay. Then the Toune's charge was urged, from the A&t of federunt of the Lords of Session in 1637, wheirby the Advocats and other members of the Colledge of Justice consented and bound themselfes to pay that annuity at 5 per cent. It was represented,—This was no clandestine a&t, nor any deed of the Toune's, but standing recorded in the Lords of Session's books; that *nudæ verborum emissiones in stipulationibus* ware not regarded, but suspected of levitie, they not carrieng so clear ane impreffion and conviction of a fixed designe to bind: but heir was ane a&t done with much deliberation, gravity, and seriousnes, before the Lords, the supreme judges ordinar of this nation;

. . . The nixt remarkable step in this progresse is the A&t of Parliament anno 1649; and though it be a 49 A&t, and sweip't away by the rescissorie one, yet it gives a morall reason of everlasting verity to it, viz: that none can withdraw or seek to exeeme themselves from the provis'on of ministers, without contracting great guiltinesse before God; and of the justice of which A&t the Parliament, in 1661, ware so convinced, that they renewed it; and upon that A&t does the good Toune likewayes found. And the Colledge of Justice may be so kind as to consider, that much of the Toune's debt is contracted upon their accompt; for their accommodation, they had built that noble fabrique of the Parliament House, and reered it on the place wheir the ministers houses of old did stand, being St. Giles's Church yaird; they built the Tron Church; brought in the water by conduits, &c. To whom ware they doing it? ware they not making freindship theirby for their oune soulls, if this exression may be pardoned, as somewhat popish? Is it not to the citie of our solemnities, our metropolis and capitall, the *communis patria* for citations and confirmations; erected in a royalty *a tempore antiquissimo*; adorned with many glorious concessions of our kings; complemented with badges of royltie and parcells of the soverainety, as scarlet robes, a scepter and fword; the cheiff magistrate made his Majestie's immediat deput and lieutenant, and ordained, by his Majestie's oune ranking, to take the precedencie, within the Toune's liberties, of all subje&ts whatso-

ever, nixt to yourselfe, my Lord Chancelor. That this incorporation (like all other things,) was very inconsiderable in its commencement ; and when the Advocats ware not above 10 or 12 in number, it was reasonable to encouradge them with priviledges. When they ware in ther swadling cloaths it was charity : but now to continue thesse fⁱ&titious and imaginarie priviledges of theirs, when they are turned so potent and formidable, is what will choak the common reason of mankind. . . .

The speakers for the Colledge of Justice ware, Sir Andrew Birny, Dean of Faculty, Sir George Lockhart, Sir John Cunynghame, Sir Robert Sinclair, and Sir John Dalrymple, who repeated their reasons of suspension ; and alledged, That commonwealths, in all ages, had ever honored Advocats with the highest marks of respect ; That the wisdom of our ancestors had not been wanting in this, but had cumulat it with many encouragements ; That the session is very old, being erected by King James the I., by the 65 A^ct of his 3^d parliament, in 1425. That, at the 2^d modell and constitution of the Session, in King James the 5^t tyme, their priviledges are again ratified to them, by the 68 A^ct of his 5^t parliament held in 1537, called the King's good mind anent the Lords of Session ; and tho the priviledges their indulged seime only *per expressum* to be given to the Senators, yet that 's only a *synecdoche partis pro toto*, and the rest of the Colledge of Justice are all included in the Lords priviledges by participation and communication. So great hes been the care our Parliaments hath had of this august colledge, that they have met sometymes to doe noe other thing but to ratify the priviledges of it ; for in Quean Marie's 2^d Parliament, their is only one A^ct, and it is in favors of the Colledge of Justice. And in the Parliament held in anno 1593, their are tuo A^cts in that one Parliament ratifieng the priviledges of the Colledge of Justice ; and their is scarce any Parliament that hath not look'd upon this as one of the great interefts and concernes of the nation. And the 279 A^ct of the Parliament held in 1597 is remarkable, not only that it exeeme the Colledge of Justice from the præstation of ather the *munera personalia* or *onera realia* within brugh ; but also it exprefly mentions some who lived within brughs at their oun liberty, nathing knowing the Magistrats in kirk nor policy. And from all thir, inferred that the

Toune's exacting annuity from them was ane unlawfull and irregular imposition, contrarie to the generall laws, and derogatorie in particular to their immunitiess and exemptions from all taxes, impositions, &c., (of which see Hope in his larger practiques, Tit. of the session.) And that they ware founded in a clear law, viz. a printed publi&t A&t of Parliament, in 1661, ratifieng all their priviledges, in the most ample forme that can be devised. Then they answered to the A&t of federunt, in 1637, That 1^o, it was a simulat, clandestin, patch't up A&t, the penult day of a session, and disclaimed by the most eminent lawyers after. 2^{do}, It is not binding nor obligator, nather upon themselves nor their successors. Not upon themselves, because not subscryved: and, in 1661, the Lords could not sustain a judicall A&t to prove one's consent without his oun subscription, in the case betuen Osburne and Buchanan: nather can it bind their successors in the office; because, albeit they are a collegiat body, yet this is not in law the *habilis modus* to bind a corporation, so as to make the obligation to deschend, it not being in any affair depending on the nature of the university; and it being *in materia odiosa*, introducing a burden, it could not be without a preceeding warrand under their hands, to authorize the said surrendar, and to remaine for a lafting monument and instrument of their slaverie. As for the A&t of Parliament in 1661, bearing a ratification of the imposition of the annuity, and ordaining it to be payed by the members of the Colledge of Justice, as weell as others; they answered, No respect was to be had thereto; because it was only a privat and unprinted A&t of Parliament, never red, debated, nor voted, but past amongs the ratifications; altho it is pretended that Sir John Gilmor, then President of the session, took it up and amended it in some particulars; and theirfor it clearly falls under the A&t *salvo jure cujuslibet*, and most stoop to the publi&t law in that same Parliament, ratifieng the priviledges of the session: and Sir George Lockhart urged much from the words of the A&t *salvo jure*, in the Parliament 1633. That the Toune is ill advised to contend with them, from whom they derive much, both of their grandeur and wealth. And if the Session deserted them, tho only for a whille, it would expose them not only to penurie, but likewayes to contempt.

To this it was answered for the good Toune of Edinburgh,—That they

were far from envying the flourishing and prosperity of the Colledge of Justice,—great and happie might they be,—part of the Toune's concerne being wrap't up theirin ; but it behooved to be cautioned and qualified, as the acclamations to Pompey ware in Rome,—*Sit salva hujus civitatis libertate potens.* It is not fitt the Session should, like a diseased splen, grow to big for the body ; that would discompose the wholle politique frame. For ought we can know or conjecture, every gentleman's family in Scotland, that hes mo sones than one, ar designing them to follow the profession of law ; in the nixt generation the most part of the inhabitants of Edinburgh shall be members of the Colledge of Justice ; ware it reason that they should plead immunity from the ministers stipends, or that the far lesser part of the inhabitants of the toune shall bear the wholle burden theirof ? Why doe not members of the Colledge of Justice, by this same very rule, refuse to pay any stipend in the places of the country wheir they have interest ? if they have a priviledge, why does it not defend them *ubique* ? But this is a meer begging of the quæstion, and is *gratis dictum*. Let them produce us one scrap of a pen for this so boasted a priviledge of theirs ; shew us but wheir it stands recorded, and we shall yeeld up the wholle cause. The mistake is fundamentall, the error is in the first concoction ; they presuppose and beg a priviledge, wheiras their is no such thing in *rerum natura*. If they say the A&t of federunt 1637 mentions their exemption by the Secret Councell, the same is a narrative, framed by the lawyers themselves, to give a rise and cullor to that A&t, and is *funditus* convelled and redargued by the books of Secret Councell produced, bearing the direct contrarie, and ordaining all to pay annuity. *Qui fundat se super privilegio debet id docere.* 2^{do}, The ministers being in possession of their annuities, even from the members of the Colledge of Justice, are in the case of *regula cancellarice apostolicae*, that *triennialis et decennalis possessor non tenetur docere de titulo in beneficialibus*, but his title *præsumitur* ; and which, as it is unanswerable in law, so few or none of thesse gentlemen standing at the bar can or will deny but they have quietly acquiesced in the aid A&t, by paying their annuities to the Toune's collectors till of late. Wheiras it's alledged the A&ts giving priviledges to the Lords of session comprehends all the dependers and retainers, I crave pardon to

differ : for, besides that statutes most be understood strictly, and *secundum literam*, upon perusal of the speciall priviledges their enumerat, they will be found to be intransfissable and incommunicable, *et non egredi personas Dominorum*. And, *ejso* they ware included, exemption from taxes or impositions would not reach this, for annuities is no such thing. . . .

All their branling is not able to shake themselves louse of the A&t of federunt. Thir gentlemen would be very angry if I should deny them to be a faculty and incorporation, vested with that same power to enter into pa&tions and contra&ts that any other collegiat meeting is. Now, in other societies doe we not see that their oune a&ts binds them. As an act of the Toune-Councell of Edinburgh makes the Toune and the succeeding Magistrats liable for the debt theirin. (See Durie, 22 *Decembris* 1626, Peibles *contra* Toune of Perth.) If your Lordships of the Sessyon ware to renonce your wodset right of the Cannomilnes, needed their any more but a judicall a&t? If the consent and subscription of every one should be requisit in such a case, collective bodies should never come to ane expedition of their affairs; for remeend wheirof, they ather bind themselves by their a&t, or a syndic constituted by them. And Osburne's case meets not, for their the judicall a&t was made up *ex intervallo super reminiscientia judicis*: And doe we not all know, that the appending the seall of the priory and metropolitan church of St. Androis serves for a sufficient symbol of the consent adhibit in the administration of the deeds of the bischopric, without any subscription? Whereas they would thrust the Toune's Act of Parliament, for their annuities in 1661, out of doors, because the Colledge of Justice priviledges are likewayes ratified at the same tyme. It is answered, That the a&t of annuities is both posterior to theirs, and does comprehend the specifick case controverted, and hes determined the members of the Colledge of Justice shall be liable, and so most derogat from their generall ratification, which expresses no priviledge at all, but in the bulk; and it is unquestionable if the Parliament had been demanded, whither they intended by that general ratification to exeeme them from this annuity, but the legislators would have answered negative. And the 165 A&t in 1593, positively discharges that no private A&ts of Parliament prejudge ministers livings. Nather is this A&t of

Parliament, ratifieng the annuities, ane private A&t, nor does it fall within the compas of the A&t *salvo jure*. For it is not the printing or not printing of ane A&t of Parliament that renders it ather privat or publict, but its the subje&t matter and univerſality of its extent or san&tion. And the Lords of Seſſion are intreated to caſt their eyes on a deciſion registrat by Dury, at the 10 of December 1622, the Earle of Rothes againſt Gordon of Halhead, wheir the Lords found ane particular A&t of Parliament (wheir their was no ambiguitie reſulted from the interpretation of it) fell not within the A&t *salvo*, and that the Lords had no power to decide whither it juſtly or unjustly ſo ſtatuted, but the ſame ought only to be tryed in Parliament. See alſo Dury anent the A&t of Parliament rehabilitating F. Stewart of Coldingham; and Haddington, in his *pratiques anno 1611*, tells, the Lords sharply reprooved ane advocat for debating the legality and justice of ane A&t of Parliament. So that the Lords will find they are not empowered to medle with this A&t, much leſſe to goe over its belly and annull it. And it is with no ſmall averſion that they contend with the Colledge of Justice; but they cannot be otherwayes anſwerable to that faithfulness required of them, they being only curators, overfiers, and ad- ministrators of the Toune's priviledges, and none of which they have power ather to tranſact or give up, being diſenabled by the 112 A&t of Parliament in 1587, diſcharging brughſ to diſpoſe on their liberties without conſent of King and Parliament. Wheirunto it was replied, for the Colledge of Justice,—That they needed not inſtruct a priviledge, because as to immunity from burdens, they are founded not by priviledge, but *jure communi*. As for the poſſeſſion the Toune hes, 1^o, It's violent, by illegall poindings. 2^o, The lawyers, what they give of that kind towards the ſuſtentation of the miſtiers, will pay it as a benevolence; not as a debt that can, *ex neceſſitate juris*, be extorted. And, if the Toune will paſſe from their compulſitors, the Colledge of Juſtice will very chearfully contribute and affiſt. And yet theſſe gentlemen, the miſtiers, who deſerve their ſtipends very weell, needs not be anxious that any thing will be deducted of their ſtipends, (as the Toune of Edinburgh threatens them, if the Colledge of Juſtice annuities be taken from them.) For 1^o, All theſſe who ought to have the name of the Colledge of Juſtice, viz. Lords, Ad-

vocats, Writers to the Signet, and Clerks, (excluding ordinar Writers, Nottars, Messengers; Lords, Advocats, and Writers men; Clerks of Exchequer, &c.) their annuities will be within 1200 m^{ks}. by year, as, after tryall and calculation was found. 2^{do}, The Colledge of Justice offers to ferme the annuity, and other rents the good Toune hes mortified and allotted for their ministers, and pay their wholle 12 ministers compleatly theirwith, that their shall be no deficiency; so that, of necessity, their hes been ather malversation or negligence in the bygain administration of it. Wheir it is pretended that this annuity is not an imposition, and so not comprehended in the A& exeeming from impositions, it's desired they may give it another name. . . . The A& of federunt in 1637 can never be sufficient, without a consent in wryt, to entaill that servitude; nather will ane naked a&t of ane Toune Councell bind a debt on the Toune, or a judicial a&t of the Lords, renoncing any wodset they had for security of their mortified moneyes, oblige them; but, in both cases, their behooved to be a prævious a&t subscryved for the warrand of both. The instance from the common seall of S^t Androis, in place of the chapter, signifies meerly *ex instituto*, and in vigor of a special statute. (See 4 Novembris 1671, E. of Louthian and ministers of the Presbytrie of Jedburgh against the Toune of Edinburgh, about the Ladie Yester's mortification.) Besydes, they had very pregnant reas ons to think this A&t of federunt was in 1643 past from by the Toune; for they had scrolls of a&ts under Mr. David Heriot advocat his hands, and other memorandums, bearing, that the Toune had restricted the said a&t of the annuities, in so far as concerned the members of Session, to 5 years; and they had exhibition depending for recovery of the principalls, and craved the Toune of Edinburgh might be so ingenuous as to exhibit their publi&t a&ts and records, (which the Toune did, but nothing was found in them to fortify their alledgeance:) which might give light to the truth; and that in 1658, the Colledge of Justice had obtained a decret of declarator of their priviledges against the Toune; but the same was now lost, or abstracted, and not booked.

Then the lawyers repeated the heads and articles of their present declarator they had depending against the Toune, viz. 1^o, Exemption from annuities. 2^{do}, From all jurisdiction, civil or criminal, that the

Toune might not be their judges in any case. The King's Advocat seemed to yeeld, that the Toune should only have *imperium* over them in case of ryots committed in vacation tyme ; for, in sessyon, he thought the Lords ware only to be applyed to in such cases. Some thought this too large and Cassandrian a concession, for it pleased nather party. 3^{to}, The Colledge of Justice craved to be declared free from paying the small dues at the ports for their goods and plenishing brought in or out, which, by the Toune's gift theirof, are destinat to mending and repairing the hy wayes and avenues leading to the city, which is a publi& good. 4^{to}, Craved that it might be found lawfull for them to keep taylors, masons, or other craftsmen, tho unfree, within the brugh, to work their work in their oun houses, without disturbance or molestation, or being seized on, and their work confiscat by the trades of Edinburgh and ther deacons, on the pretence of their priviledges contained in their severall fealls of causes, which seime contrarie to publi& utility. 5^{to}, That they may have convenient seats in the churches for hearing sermon ; and that the meanest burgesse may not be preferred to them, as hes been hitherto done, in competitions ; and heir, when it came to a commoning, they craved the Hy cathedrall church to be appropriat for the Lords of Session, and the rest of the Colledge of Justice, and to have their oun minister, and they would pay him ; but the Toune of Edinburgh cannot part with any patronage within their bounds, in the undoubted right wheirof they are stated. 6^{to}, That in imposing of stents by the Toune's oun authority they be absolutly free. And, as for theffe laid on by Parliaments and conventions, that according to the acts of the Toune Councell of Edinburgh, and particullarie that in 1660, the Colledge of Justice may have some of their number present, that they be not un&equally assed and burdened for their lands. 7^o, That the imposition of 2 pennies upon the pint of ale may, conforme to the contract betwixt the good Toune the Colledge of Justice, and the shire of Mid-Lothian, be manadged with common consent ; and that the Toune may exhibit their compt books of that chamber, to the effe&t it may appear whither it hes been applyed to the right use, for payng of and defrayng the Toune's debts, or if it hes been inverted. See, of thir particulars, many things scattered up and doune in other collections besydes me.

Nota.—The mortifications the Toune sets apart for their ministers stipends are, 1^o, The annuity, which commonly is rouped, about 11,000 mks.; 2^{do}, The rents payed for the seats in the church, rouped to 3600 mks.; 3^{to}, Their old kirk-rents, being mortifications and ground annuells due to the chaplanries and altarages of S^t Geills collegiat church, amounting to 3000 mks.; 4^o, The merk upon the tun of all goods imported at Leith, set to 3400 mks., making in all litle more then 20,000 mks. Wheiras the Toune (without ever past memorie having got a charge of horning, or bein pershued,) payes 27,000 mks. per annum to their ministers. Another complaint of the lawyers was, that the Toune's Collectors poinded their houses summarly, without suffering the 15 days of the charge to expire before the poinding, as the A^ct of Parliament in 1669 requires.

The President declared, the Lords would hear no other points till that of the Annuities ware first determined.

21 Novembris 1678.—Mr. James Daes, Advocate, is conveened before P. 38, No. the Lords of Privy Councell, for some expreſſions againſt his Maſteſty's ^{68.} Government; ſuch as calling a Dragouner a knave, and that no honeſt man would take him to that employmēt, which he alledged was of robbing his orchard.

Item, The other expreſſions anent Polwart's imprifonment, which ſee *alibi* in another manuscript, together with the ſentence againſt him, its pag. 142 and 146; it was objected againſt one of the witneſſes adduced for proving the libell, that he was infamous and had a remiſſion for adulterie: the man confeſt it to be true at the bar. Yet the Councell receaved him *cum nota*.

3 Decembris 1678.—A poor woman was this day pannelled at Crimi- P. 40, N. 72. nall Court for murdering hir child. The affife, after they had been abroad all night, ware the nixt day, by command of the Criminall Lords and iſtigation of the King's Advocat, reincloſed to mend their verdict, which ſeimes contrare to the 91 A^ct of Parl. in 1587; yet its thought they may be reincloſed *ex incontinenti*, (but not *ex intervallo*,) if they returne ane inept verdict.

P. 43, N. 86. 14 *Decembris* 1678.—At Crimall Court, the Justices by ane A&t declared they would repell in all tyme coming this objection against a witnessse, that he was ane informer, and that they would receave him notwithstanding theirof; for who shall dete&t crymes but they who know of it—and surely in law every information given of a cryme should not cast the informer, unlesse it be such partiall councell as to advise and encouradge one to raise a proces on the hopes of his bearing testimony; yet Sir G. Mackeinzie in his printed Crimallis, page 461, argues against this, and the 50 A&t of the 3^d Parliament of King James the I. seemes to condemne it.

P. 44, N. 91. 20 *Decembris* 1678.—One Alexander Traill, a messenger and nottar in the toun of Kirkcaldie, is conveened before the Secret Councell, by one James Thomeson, who complained that Traill had falsely filled up his oun name in some blank rights that ware configned in his hands as wryter; and also complained of his craving 500 mks ere he would give them up to the partys concerned; and when he had got it, he still boasted and threatned that he had yet other blank bonds lying over their heads ungiven up, tho he fayes now he was only in jest. The Lords on the 2^d of Januar 1679, laid him in the irons till he should exhibit thesse other papers; and having lyen their till the 23 of Januar theirafter, he then receaved sentence, viz. for his malversation in his office, they deprived him of his office of being ather a messenger or nottar, and for his deeds of oppression, fyned him in 100 lb. Scots, and ordained him to ly in prison till he payed it.—Messengers extortioners are ordained by our A&ts of Parliament, and particularly A&t 33 in 1469, A&ts 83 and 88 in 1587, to be punished as oppressors. *Oppressio est concusso et vis five publica seu privata.*

P. 45, N. 96. 3 *Januarij* 1679.—At Exchequer, fundrie merchands are pershued by Milne and the other fermorers of the King's customes, for entring their goods uncustomed, and stealing the King's customes; and for bribing and corrupting the waiters at the ports and elsewheir to let them passe. Alledged, that by the 12 A&t of the Parliament held in 1669,

they cannot be pershued at all, if they be not conveened within 3 moneths after the alledged abstracting or concealling ; and if they dwell 12 miles from Edinburgh, they cannot be conveined before the Exchequer, but only before the judge of the jurisdiction wher they live. Replyed, that is all true if the pershuit ware for imbezilling, but heir it is *super jure communi* for brybing. The Lords of Exchequer repelled the defences, and admitted the libell to probation, and which was worse, found the waiters who had receaved the bribes, and so ware accessorie and guilty ; yet that they might be receaved for witnesses, because it is ane occult cryme, and could not otherwayes be got proven.

9 Januarij 1679.—This day a letter red about the oued Advocats from No. 99, p. 47.
the King, which see in my Session occurrents.

13 Januarij 1679.—At Criminall Court, Alexander Todridge, keeper No. 107, p. 48.
of the park of Halirudhouse, is pershued by one Din, for resetting some sheep stollen from him by one Morison. We caused raised ane exculpation for Alexander, he having truely bought the said sheep at the West Port, which is the ordinar sheip mercat, and represented, 1^o, That Alexander was a man of knownen honesty and integrity ; 2^o, Had no acquaintance with the seller ; 3^o, So soon as he was informed theirof, he caused imprison him, and Dun, pershuar, transacted with him and let him out ; 4^o, The principall theiff most be first discust. The pershuars deserted the dyet against Alexander, in respect of his apparent innocence.

Eodem die, [16 Januarij 1679.]—At Secret Councell, Josias Johnston, No. 111, p.
merchand in Edinburgh, fyned in 500 mks. and imprisoned, for causing 49.
apprehend one Naper of Buchaple, by mistake and in respect of likeneſſe, instead of one Hendersone, who had stollen some cambrick from him the day before, and who was a common theiff. And the toune officer, John Thomson, because he seized upon him without having a warrand from a magistrat, (as he ought first to have had,) they sent him to prison, and ordained the hangman the nixt day, at 10 a cloack in the forenoon, to take

him to the trone, and their to stand for ane hower with a paper on his brow, and then to be deprived of his office, and banish't the toune ; which was thought a severe reparation of the gentleman's honor.

No. 122, p.
52.

23 Januarij 1679.—At Secret Councell, Patrick Hay, Proeft of Perth, (he had voted against the D. of Lauderdale in the last Convention of Estates in June 1678,) 3 Bailzies, and 7 Councillors, are declared incapable of bearing office within the said brugh for 3 years, because they had contemned ane former sentence of the Councell, in so far as they had made one Blair, their Pro&tor-fiscall, and Dean of Gild officer, albeit both thesse persones had been formerly declared by the Secret Councell incapable of bearing any office in Perth, because of their accession to a tumult raised against Proeft Threipland, (and yet some thought thir employes given them ware not such publict trusts as the A& of Secret Councell seemed to seclude them from,) and ordained the rest of the Toune Councell of Perth to make a new election on the 4^t of February nixt, and the Earle of Strathmoir to be present with them to see it orderly done : and yet Proeft Hay's fa&tion prævailed in this new ele&tion.

No. 123, p.
52.

Eodem die.—In ane ryot pershued by one Cruikshank against James Gordon of Seton, both of them merchands in Aberdeen ; the Councell fand James Gordon, the first aggressor, and theirfor fyned him in 400 m&s : see thir parties in another manuscript [D] at the 24 of Jully 1678.

No. 124, p.
52.

Eodem die.—In the wrongous imprisonment and oppression pershued by George Young, late bailzie in Winchbrugh, against Mr. John Hay, shiref-depute of Lithgow, and Mr. Androw Ker, his clerk, the Lords found the libell relevant, and proven by the defender's oune answers, as much as might infer ane arbitrary punishment ; in so far as Woodcockdaill confess their was such ane a&t in their shire discharging any inhabitants of the shirefdome to pershue before any other Court except themselves, and the comisars ; and they fand it ane absurd A&, and præjudicall to regalities, (and yet it is knownen that severall Courts and judicators in Scotland makes such A&ts,) and that he justified and de-

fended the fyning of George Young in 50 lb. Scots on that A&t, and his imprisoning him upon that A&t ; theirfor, they rebuked him publi&ly, and ordained him so soon as he went home, to raze the said A&t out of the Shireff Court books, and fined him in 100 lb. Scots, to be given to George Young, for his charges and expences. The libell concluded deprivation against the clerk, upon the 81 A&t of Parl. in 1540, imposing that penalty on clerks that refuse the extra&t of instruments taken in their hands. In this cause, the Councell was displeased with George Young ; because in purging the witneses of partiall councell and money it appeared they had got, wheiras, 1°, it's saffer to give witneses nothing till after they have deponed ; and, [2^{do},] tho the party may lawfully bear his witneses expences, yet heir George had given some of them 2 dollars, which was thought exorbitant, albeit they had attended severall Councell dayes, and refused to come in without ; yet a caption could have forced them.

28 *Januarij* 1679.—At Secret Counsell, one Maxwell pershues one No. 137, p. called Zuille, as he who had circumveened and falsely deceived him, ^{56.} after they had agried to cancell a minut of the sale of some lands, he only sent him a copie, which he having torn as if it had been the principall, he theirafter got a charge of horning upon the principall. The defender alledged he sent him only a copie to shew him the tenor of their agriement. The Lords after tryall found the matter wholly civil, (which seldome they doe or decline themselves,) and referred it to the judge ordinar the Seffion, (for the pershuar had of purpose tabled it heer hoping for quicker dispatch than at Seffion,) and fyned the pershuar *quam temere litigans* in 100 mks., and in 2 dollars for each witneses expence, and ordained him to goe to prison till he payed it. This pershuar wanted friendship.

Eodem primo Februarij 1679.—W^m Gordon, agent, was imprisoned by No. 144, p. the Lords, in regard of this indiscreet expression in a bill he gave in for ^{58.} his brother against Pitmedden, in the affair of the daughters of Seton of Blair, viz. that they might not be overhaled, but get a share of that justice the Lords uses to give to others.

No. 147, p. 58. 4 Februarij 1679.—Marion Weir, prisoner in the tolbuith of Edinburgh, and sentenced to be hanged on the 5^t of Februuar, for murdering a child borne by hir in fornication, did this morning about 4 or 5 a cloak of the morning, make hir escape out of the said tolbuith, by cutting some of the stanchells and iron graits by *aqua fortis* on the window in the uppermost ftry towards the Hy Street, and coming down upon tows; other 3 weemen escaped that same way with hir, viz. one that was in for debt, and one Smith a midwyfe, and hir servant woman called Scot, in upon the suspition of having murdered a child, of which see more *infra* the 10 of March: but the midwife fell and broke hir leg, and both shee and hir woman ware got again, and afterwards condemned and execute; but Marion Weir has hitherto escaped. It was judged a bold and daring attempt for weemen, for the height was formidable, but life is sweet. The keeper was to blame in suffering *aqua fortis* and ropes to be conveyed in, and not having keepers ather in the same roume or neir hand.

No. 152, § 3. 7 Februarij 1679.—When one would take the possession from a wod-setter upon the 62 or laft A& of the Parliament held in 1661, he should offer caution besyde his oun bond, and he should wairne the wodsetter 40 dayes præceeding Whitsonday to remove in the same way as one would doe with his tennent.

No. 160, p. 62. 20 Februarij 1679.—At Secret Councell, the Earle of Glencairne per-
shues his brother's reli&, now Lady Robertland, for ane aliment of hir
joynture of 8000 mks. *per annum*; and Sir George Lockhart alledged
for him that all lifrents should be *salva rei substantia*, *Lege 1, D. de usu-*
fructu, and not ane absorbing and annihilating of the fee as is heir. An-
swered, he had ane pension from the king, and many of the debts on that
estate are contracted since the establishment of the right of hir joynture,
and so thesse debts could never be a just nor legall confideration to abate
of hir moderate joynture, being but 7000 mks. by year, and shee being a
person of greater quality, one of Duc Hamilton's daughters, and brought
ane opulent portion, and by marrieng a gentleman shee had committed no
disparagement. And wheiras the Lords gave the Earle of Morray ane

aliment of his mother, their was *dijpar ratio*; for besydes hir being a prodigall, their was *jus naturæ*, shée was his mother, and so *ex æquitate*, bound not to see him want; but heir the Ladie is ane absolut stranger to the Earle, pershuar, and bound by no rule to aliment him. And when the Marquis of Douglas craved someting of the Lady Stranaver, his mother-in-law, (which is nearer than a fister-in-law,) the Secret Councell refused it.

24 Februarij 1679.—This day, one Mitchell was banished by the Cri- No. 163, p.
minall Lords. 63.

25 Februarij 1679.—At Secret Councell, the Lady Torwoodhead per- No. 167, p.
shues Jean Hodge, wyfe to Florence Gairdner, for a ryot in poinding
upon a decreeft standing suspended, and for tying the pershuar's fervant
woman hand and foot; their was much debate upon the relevancy of the
answers that ware made. 64.

27 Februarij 1679.—Sir William Ker, Director of the Chancery, having No. 171, p.
turned out Mr. W^m Hog, one of the wryters their, pershues him for
opprobrious language, taking away the registers, &c., and Mr. William
pershues Sir W^m for illegally depriving him, he having given him 1200
m^{ks}. for it. The Lords of Privy Councell referred to the judge ordinar
to consider the commensuration betwen the delict and punishment, if it
merited deprivation, yea or not; and *medio tempore*, during the depend-
ance suspended him *ab officio*, and ordained him to crave the Councell and
the said Sir W^m pardon, for calling the said Sir William, his master,
capricious, tho many thought the character true.
Vide more of this *infra*, page 118, [N. 316, Hog reponed N. 782.] 65.

28 Februarij 1679.—Robert Grahame, Provest of Dumfries, a man in No. 172, p.
great reputation for wealth as a drover, being brok, this day his escheat
is gifted to the Earle of Dundonald, the President Craigie, &c., *primo loco*, for the payment of their debts. They also got the gift of the recogni-
tion of his lands, which he had made to recognosce, by taking a base

infeftment after he was bankrupt, which will occasion a pretty debate in the declarator of recognition, whither or no such a fraudulent deed can make the lands recognize so as to prejudge his creditors; and if this will fall under the compas of the 18 A&t of Parliament in 1621, he could not have disponed validly then; *ergo*, nather lose them by delinquency *tantum contrahendo quantum delinquendo*. *Vide infra* the nixt page *in calce*. Many will be great losers by him.

No. 173, p.
65.

Eodem tempore.—John Cunyghame of Entrakin's chaplain was per-
suaded before the Secret Councell, and Entrakin craved to be fyned in
regard he was not licenced by the Bischop of the diocese, as the 4^t A&t of
Parliament in 1662, *in fine*, requires. And if this extends to scoolmasters.

No. 174, § 1.
p. 65.

Eodem tempore.—The Lords of Privy Councill fyned Sir William Fleeming of Ferme, Comisar of Glasgow, in 4000 merks, for his wife's going to conventicles; but declared, since the husband should not suffer for the wife's fault, that if shee survived hir husband, then his airs should retain as much as he payes of fyne, togither with the annuel-rents theirof from the payment, and that out of the l end of hir joyn-ture; which will be a check on wyves zeall or their inclination to wrong their husbands, if they ware so malicious; and does not punish the husband *ob delictum alienum*, which is not in his power sometymes to coerce; and if shee dy first, then makes hir executors liable. But what if shee have none, or it be the husband, or hir oune children; however, this is ane extensiōn of the 5 A&t of Parliament in 1670, making husbands liable for their wyves going to conventicles, and borrowed from æquity. *Quæritur*, If a father by that A&t be fyned for his children, or a master for his servants, what redreffe hes he of their portions or fees.

No. 175, p.
68.

[28 Februarij 1679.]—I was concerned this Winter Seffion in many other causes that deserve to be marked, but waving their debate, I shall only name some of them. 1. George Young and James Allan, Wryter to the Signet. 2. Edward Gilespie against Ratho, John Muire, and James Grahame. 3. Thomas Wilson against Weitch, Robert Young, and Tor-

phichen, and Broun the cook. 4. James Thomfone against Robert Sanders, printer. 5. Mr. Hew Fork, Shireff-clerk of Renfrew, against my Lord Register. 6. Goldy against the Toune of Dumfreis. 7. John Montgommery against De Waux. 8. Thomas Broun against Dumbar of Baldune. And a great many others, which are all to be seen in the informatiouns theirof besyde me; and in the former pra&iques, I have only marked the interlocutors in the most of them, because I have the debate besyde me in ther bills and informations.

5 Martij 1679.—The Lords of Exchequer this day passed the gift of No. 176, p.
the lifrent escheat of the Lord Forrester in favors of Hew Wallace,
^{68.} Wryter to the Signet, and he being payed, assignd the remanent and superplus profit of the gift to Edward Ruthven, sone to the rebell, as creditor to his father, who had intromettet with the E[arle] of Bramford's estate, belonging to the said Edward, and that by a speciall signator theirof from his Majesty. The obje&ions against this gift ware, 1^o, That, *non constabat*, that Hew Wallace or Edward Ruthven ware creditors. 2^{do}, It invited the rebell to consume his sone's means, for it boor what he ather had or should intromet with, belonging to the said Edward. 3^{to}, It was dounright against the 145 A& of the Parliament held in 1592, annulling gifts of escheats given to the rebels' barnes, and to the Lords decisions, D. 25 Junij 1622, Borthwick's. 4^{to}, It was null and simulat, being impetrat by the rebell's oun moyon and means: so found D. 26 Junij 1622, Inglis donator to Ochiltree's escheat, *infra*, page 84 and 82.

7 Martij.—At Privy Councell the Lady Ballegerne, and Captain No. 177, p.
Tyrie, hir husband, give in a complaint against Poury Fothringhame,
^{63.} and Hay of Pitfour, *tutor testamentar*, craving the custody of hir oun daughter, who was one of the 2 airs portioners to Gray of Ballegerne, albeit the mother was married, because the child was but 9 years old, and very tender and ill used, and not provided with medecines and other convenience, and fretted whille absent from hir mother, and offered to entertain hir gratis. Answered, The tutor was præferable at all tymes, but espe-

cially the mother being remarried, and the offer of alimenting gratis was repelled in the case of Collonel Fullerton, and the Lady Towie and hir 2^d husband. This seimes ane od pershuit.

No. 178, p.
68.

8 Martij 1679.—At Criminall Court, a poor coilziar woman, brought from Borrowstounesse, was sentenced to be hanged for murdering hir child, borne in fornication, by cutting of it's head, and wrapping it in hir courcheiff. She confess the same, and was execute.

No. 179, p.
68.

10 Martij 1679.—One Smith, a midwife, and Scot hir servant-woman, are condemned to be hanged, for murdering a child wheirto shee was called as midwife: all the probation was only pregnant præsumptions against them: As to the conjectures if the child be borne dead, and the præsumptions of its being strangled or not, see *Diodorus Tuldenus* in his *Jurisprudentia extemporalis*, pagi. 92, et seqq. And it ware to be wished that we had such a statute made with us, as I find they have in England, viz. A& 27, anno 21 Jacobi 1. Regis, viz. that it shall be murder for the mother not to call for help, or to conceall the death of hir bastard child; which would prævent exceedingly the destroying of children, if thesse violent presumptions ware once made eneugh, vide *supra*, page 25, in the case of one Knox. What added to thir 2 their guilt was, they had broke the prison with Marion Weir; (*de quo*, vide *supra*, page 58;) but flight imports but little; and it was urged from the Advocat's oun Criminalls, *titulo 26. de Fractura carceris et fuga* page 223, he calls them *levia indicia*. The mother of this child, called Hendersone, was banish't Edinburgh, and whip't, because, (though shee was free of the murder, and cryed oft for hir child) shee feimed to prævaricat as to the father of the child: shee had been servant to Mr. James Cunyghame, wryter.

No. 180, p.
69.

12 Martij 1679.—This day, by order of Privy Councell, their is a strict search made throw Edinburgh (the ports being closed) for Mr. John Kae, and thosse others who had wounded Major Johnston, and the other souldier who dyed theirof, and for intercommoned ministers. And one Barclay being taken, escaped out of the court of guard; and my

Lord Lithgow's fogors ware brought in upon the toun, which was judged a great infringement of the toune's liberties. The Councell emitted sundry proclamations, and commanded all non-conformed ministers reli&ts, or wyves, to void the toune, and all strangers to give up their name to the constable nightly, &c.

3 Maij 1679.—The Archbischop of St. Andrews, Mr. James Sharp, No. 181, p. 69. murdered at mid-day, being Saturday, by 10 or twelve men, within two miles of S^t Andrews. It was ane barbarous act : He was in his climaterick. Some said the remonstrant Presbyterians ware his murderers ; others laid the blame on the Jesuits : (see the printed papers on either syde.) Cardinall Beton was also killed in the moneth of May. (So Knox in his Historie, p. 71 & 72.) Saturday had been fatall to him ; on it Mitchell made his attempt, &c. Buchanan, in the life of King William, lib. 7, p. 239, shows what severity he used on Harald Earle of Orkney and Cathnesse, for cutting out the Bisshop of Cathnesse his tongue, and thrusting out his eyes. He caused emasculate and geld him and his wholle posterity, and then hanged them. Lesley, *in vita Wilhelmi*, tells us the Bisshop's name was *Sandus Gilbertus*.—This is the first Protestant Bisshop murdered in Scotland. Hamilton, Archbischop of S^t Androis, was, in 1570, hanged by order of law. The Secret Councell met on Sunday the 4^t of May, and emitted strict proclamation for discoverie of the murderers. (Of the execution of Hackston of Rathillet, one of the murderers, *vide infra*, 30 July 1680, pag. 160.) Craig *Feudorum*, pagina 102, tells of another Bisshop of Caithnesse boiled by the people for exacting the teinds. The Donatists, or Circumcellians, beat a holy Bisshop called Maximianus with clubs to death. Lipeloo and Grasius *in vitis Sanctorum tomo 4*, on the 7 of November, tells of a holy Bisshop of Cologne called Engelbertus, murdered anno 1225 in a manner very like our Archbischop ; it's p. 442.

14 Maij 1679.—By a letter from the King, five Privie Councillors are No. 182, § 1. called up by him to London, to clear the pretended hostile laws, as the P. 69. Militia A&t, &c., and to a conference anent my Lord Lauderdale's a&t-

ings.—They ware the President, Advocat, Register, Justice-Clerk, and Justice Generall.

§ 2. One Mr. John Spreull in Glasgow, upon suspition, was brought before them; and because he shiffted to call it the *murder of the A. Bisshop* and to tell who lodged with him the night following, he was threatned with the boots, but at lenth he satisfied them.

§ 3. Mr. George Scot of Pitlochie and his cautioners fyned in the wholle 10,000 mks. for breaking his confinement at his oun house; but superceded the exacting of 7000 mks. of it till they saw his future behaviour. I mention none of the A&s of Councell heir, because I have them all in print.

§ 4. *Eodem die.*—Hamilton of Bankreiff pershues Mr. James Hendersone, wryter, for cancelling and destroying some principall papers wheirof he got a fight at a meeting, and for nipping the subsciptions from them. This was not proven against him.

No. 183, p. 70. 3 Junij 1679, Tuesday.—Prefident Stairs being at London, the Lords, according to their custome, and the warrant given them by the 93d A& of the Parliament in 1579, ele&tet my Lord Goffurd Vice-President. Some thought Colinton or Strathuird, as the oldest senators, might pre&side, conforme to the 93 A& of the Parliament held in 1540. Others, that the King might name one to supply the Prefident's absence, as was done in the 42 A& of the Parliament in 1537. 2^{do}, Their being but ten Lords, (wheirof one behooved to fit in the Utter House,) the fulnesse of the quorum was doubted, because of the 57 A& in 1537, appointing that to a quorum their shall at leist be in every sederunt 10 Lords, with the Prefident or Chancelor, (for the 4 extraordinar Lords make no part of the quorum, so that 5 or 6 Lords with them could not a&t,) but custome hath pr&vailled, fince that 9 makes a quorum, as being the major part in *numero impari* of 15. If a sentence ware pronounced or advised, and voted by fewer then 9, (as I know severall such done in the Lords afternoon meitings,) I think they may be quarrelled and reduced as pronounced *a non habentibus potestatem*; for at most they ware but like to a Committee, and could only prepare a report against the nixt day to the

full number : but none hes yet adventured to quarrell thesse decreits upon this nullity. Vide the other manuscript, 1^o Junij 1677.

Eodem die—John Williamsone, shiref-clerk of Perth, was pannelled No. 184, p.
before the Crimall Court for usurie ; wheirof, having raised ane ex-
culpation, the Advocat-Depute not being readie to infist, and urging
to have the dyet continued, the Lords deserted the dyet simpliciter ;
which imports that no new letters shall be raised, but upon speciall
notice of the Lords and upon a bill. And this in respe&t it's but a statu-
torie crime, the dyets in criminalls are peremptor, and that few or none
of thesse processes for usury have hitherto taken effe&t, or the persones
bein convi&t : See the informations in this cause, and the Advocat's
criminals, *titulo Usurie*.

4 Junij 1679.—At the publication of a proclamation of Secret Coun- No. 186, p.
cell over the mercat croce of Edinburgh, against the rebellion and insur-
rection in the West, their fell out some difference betuixt the Macers of
Privy Councell and the Pursevants, whosse names should be first red and
infert. Some think the Pourfuivants have the precedency, and that it is
but within thesse few years that the Macers attended at thesse proclama-
tions. There is 4 lb. Scots distributed amongs them for each A&t pro-
claimed, which makes the controversie. They are the Lyon's brether as
weell as the Heralds, and may execute summonds of treason as weell as
they, which ane ordinar messenger-at-armes can not doe, because it most
be with sound of trumpet, and their coats on. The Heraulds wear coats
richly embroidered ; the Pursevants have only painted ones. The Macers
(who are only servants) and the Messengers, *Feciales, Caduceatores, Armo-
rum Reges, Viatores, Apparitores, Officiales, Beroarii, Nuncii, &c.*, have
none, only they have a blazon.

6 Junij 1679.—From this time till the beginning of Jull, there was No. 188, p.
a surceas of businesse in the Seffion ; so that their was only reading of
bills in the Inner-house during all that tyme, in respect of the commotion
in the West ; and that many of the subjects ware, by command of the
73.

Secret Councell's proclamations, attending the King's army. But that affair being ended, the Lords entred again to busines, tho with much tendernes, that no advantage might be tane in respect of anie's absence or unpreparednesse :—See the accompt of that insurrection in the other manuscripts besyde me.

No. 207, p.
78, § 1.

28 *Julij* 1679, being Moonday, Messrs. John King and John Kid ware pannelled [at Criminal Court] for preaching at field Conventicles, (which, by the 5 A& 1670, is death to the minister,) and for being in armes at the late rebellion in June laft, in the West. They offered ane exculpation to the Justices on thir heads :—1^o, That they ware only present in the said army casuallly, and not intentionally, and ware in a manner detained prisoners by them ; and such naked presence without affistance was not criminall ; and that they ware so far from being incendiaries to incite the people, that they, on the contrare, intreated them to lay doune their armes. 2^{do}, The Duke of Monmouth had power, by his commission as Generall, to pardon, *remissiones dare* ; and they offered to prove by witnessesse that he had proffered them a pardon if they would lay doune their armes, and that they accepted it. 3^{to}, They ware willing to engadge to live peaceably, and never to keep field-meetings heirafter.—But their exculpation was repelled in respect of the libell ; and they, upon their subscryved confessions that they ware present in that army, ware found guilty of rebellion by the assise, and sentenced by the Criminall Lords to be hanged on the 14 of Auguft theirafter, and being dead, their heads and right hands to be cut of, and put upon the Netherboll-port, besyde Mr. James Guthrie's. They gave them large space to allow them application for a pardon ; which they did, but the King refused it. They got not their citation upon 15 dayes, but only 48 howers, being in prisone already, § 2. and *in crimine perduellionis*. (See the information for James Balfour and the other 8 that ware pannelled at this same tyme, for being in that rebellion, which contains very many pretty points in law : for the 15 dayes, see the Advocat's Criminalls, page 472.) Being in *laſe majestie*, they got their copie, and ware summoned by a herauld with his coat on, and with the sound of trumpet. In treason, the King's Advocat, as per-

shuar, is laft speaker if he please. The pannell's advocates represented to the Justices, that being *in crimine perduellionis*, the Privy Councell had granted them a warrant to appear for the pannels; but many thought they needed not this, since the 38 A&t in 1587 authorized them; yet see 135 in 1584, and it is safest to seek a warrand.

George Ogilby, Albany herald, being one of their assisers, pretended § 3. that the Lyon, by his gift, had exēimed them from assises, (*quæritur* if the Lyon can doe it,) and protested it might not prejudge his priviledge. Thomas Broun, as late thresurer of Edinburgh, and so a magistrat, begged to be excused and not put upon their assyse; but both their excuses ware repelled by the Justices.

On the 14 of August 1679 the sentence was execute against the saids § 4. Mr. John Kid and King, (the indemnity having been proclaimed with much pomp in the forenoon; concerning which, and their death, see many observes in my Historicall Manuscript *alibi*.) They had mourners with them on the scaffold, which is not allowed for traytors, unles a speciall licence be granted by the Privie Councell; but heir it was not taken notice of. Vide l. 35, *D. de religiosis et sumptibus funerum*. Many thought Kid more composed then Mr. King, and some adventured to say, that Mr. King, for infusing couradge in him, had drunk more then was fitt for him to doe, which is a most dangerous practice. See Mr. Trap's commentary on the 31 of the Proverbs, v. 6,—“ Give strong drink to him that is ready to perish;” who tells us, that Vitellius made himselfe drunk to droune the fear of death. See the copy of both their speaches at full lenth besyde me.

Eodem die.—Mr. William Weitch, who had been forfault in absence No. 207, § 5. for being in the Rebellion 1666, and many ministers who ware in prison, ware all liberat by vertue of the King's pardon, indulgence, and indemnity: And, if Mr. William had been reponed to his defences, or needed them, it was alledged the decreet of forfaulter pronounced against him upon a probation tane in absence, of his being at the Pentland Rebellion in 1666, had a materiall nullity, viz. that the executor of the dittay of treason, and the witnesses, ware not sworne in the Court upon the truth

of the executions; for the lack of which formality, Hope, in his large Pra&tiques, *titulo Forfaultors and Treason*, shows, that sundry decrets of forfaultor have been reduced; for in the executing of a breiff, such as the service of ane air, or the like, that solemnity of fswearing the executions is requisit and practised. *Ergo, multo magis* in this case, *ubi nulla de morte hominis cunctatio longa.* 2^{do}, The dittay was not execute at his duelling house, which he had before the said rebellion and rising in armes.

No. 211, p.
80.

29 *Julij* 1679.—At the Justice Court the Laird of Maccloud pershues Macneil of Baro and his brother for deforcement of a messenger; who, being convict by the Affise, the Criminall Lords fyned the pannell in 1000 lb. Scots, 500 mks. to the King, and 1000 mks. to the partie, and imprisoned him till he payed it.

No. 216, p.
81.

31 *Julij* 1679.—Their ware sundry other causes this session wheirin I was concerned, and upon which their was some debate or interlocutors, which I heir omit for brevity, as Pitmedden's and Mr. Alexander Auchinmutie's charge against John Hamilton, merchand. 2. Edward Gilespie's against James Grahame. 3^{to}, The Lady Roffyth against the Laird. 4^{to}, Carfan and Glendinning. 5^{to}, Colin Robertson and Gray of Skibo. 6^{to}, Earle of Winton and David Scot, apothecar. 7^o, Thomas Hamilton against his brother John Hamilton, merchand. 8^{ro}, James Baynes *contra* Lermont of Balcomie. 9^o, Hew Blair against Jean Robertson his taver- nor. 10. William Andersone against George Monteith. 11. George Heriot against Mr. Harie Blyth; and sundry others, wheirof see the informations besyde me.

No. 217, p.
81, § 5.

I hear, in a pershuit at Littlejohn the taylor's instance against the Dutchesse of Monmouth, in 1667, for taylor compts, the Lords found, in respect shee was *persona illustris*, that theirfor shee behooved to be liable, tho it was offered to be made appear that shee was intartained *aliunde*, and had allowance for cloathing and all other necessars. This may be confidered for the case of David Scot's furnishing the late Countes of Winton, in his pershuit for it against the Earle of Winton.

13 et 14 *Augusti* 1679.—By order of Privy Councill, his Majestie's No. 218, p. Indulgence, Pardon, and Indemnity was proclaimed, and a proclamation ^{82.} iſhued out for a Circuit Court, for going thorow ſome ſhires, and to begin on the 1 of October, and mainly for diſcovering the Archbiſhop of St. Andrews' muſterers; as alſo for trying other crymes. See thir A&ts in print, and ſee large chaſters of thir affairst in my other hiſtoricall manuscripts.

26 *Augusti* 1679.—This day did Chriſtian Hamilton, a daughter of No. 219, p. Grange's and wife to Androw Nimmo, merchand, kill James Lord For- ^{82.} reſter, with his oune ſword, in his garden at Corſorphin. Shee confeſſed the faſt, and pretended ſhee was provocked theierto, because he, in his drink, had abuſed hir, and called hir whoor. Being apprehended and im- priſoned, the ſhires of Edenborouḡ (conforme to their privilege of judging within 3 funs, but it ſeems they are not tyed to execute their ſentenſe within that ſpace,) gave hir ane indytment to the 28 of Auguft, wheir ſhee made a large diſcourse of the circumſtañces and manner of it, ſeeking to palliat and extenuate it; yet ſubſcryved hir confeſſion of the fact; and, for putting it beyond all cavillation, they alſo adduced 3 wit- neſſes, two men and hir woman, who ſaw it.—But ſhee having pretended that ſhee was with child, the ſhiref and his deputes had dire&tet a com- miſſion, recommending to Doctors Stevinſon and Balfour, and to David Pringle and Hew Broun, chirurgians, to viſit hir and report; who having done ſo, they, by ane atteſtation under their hands, declared, that after tryall they could perceave no ſigñes nor evidences of hir being with child; but, in regard ſhee was ſo affertive and positive, and that ſhee ſaid ſhee was not three moneths gone, they could not certainly affirme ſhee might be with child, it being almoſt imposſible to determine it in the firſt quarter. *Vide titulum D. de ventre Inspiciondo.* Their is no woman that is paſt 12 and within 52 that is accuſed and condemned to dy for a maleſice, but ſhee may pretend hir being with child, ſince the thing is poſſible that ſhee may be ſo. However, if the pannell had been with child, ſhee did not deny but it was to my Lord Forreſter, which was both adulterie (ſhee being married and not divorced) and inceſt, ſhee being my Lord's firſt

ladie's neice and sister-daughter; so that the visible judgment of God may be red both upon hir and him; but see for this my historicall manuscript. In respect of the ambiguity of the physitians' declaration, the shireff-deputes qualified their sentence thus,—the Affise having returned hir guilty of homicide, (it was likewayes hamefucken, as also adulterie and incest, but none of thesse ware libelled,) ordained hir to be headed on the 12 of November nixt, that in the mean tyme it might be certain whither shee ware with child or not, and if shee ware, then shee might apply to the Privy Councell by a bill and obtaine a prorogation of the tyme till shee ware brought to bed; for, tho the child be incestuous, yet it is innocent, and not to be put to death. I find by the law of England shee would have gotten no delay, for Judge Stanford, in his Pleas of the Croun, *in ipso fine* of that work, tells the malefactrix most be with quick child, else hir execution does not fist: Our law is more humane, and thinks that ware *spem animantis perimere*, even wheir the foetus *non est adhuc animatus*. But in law their may be danger, and a great prolongation of the execution of justice; for a woman may cause get hir selfe with child of purpose, even in the prison, and, having borne that, may cause men impregnate hir again, tho after sentence; but in this case they should be carefully sequestrat from men, and within a few dayes after the birth they may be execute. The Romans ware just contrare in their custome, for a virgin (especially a Vestall) might not be put to death with them till first the hangman had defloured them, and then they ware strangled.

On the 19 of September 1679, Christian Hamilton gave in a bill to the Lords of Privy Councell, representing that the shirefs gave hir no tyme to provyde hir selfe with advocats, so that shee had omitted hir defences, and begged the Councell would examine hir witnessses, and take tryall of the manner of the commission of the slaughter, viz. that he was then drunk, in which condition he commonly was very furious, that shee was exceedingly provoked, that he run at hir with his sword, that shee took it from him to preserve hir selfe from hazard, and that he run upon the sword's point and theirby gave himselfe the mortall wounds wheirof he dyed, and so killed himselfe, and shee stood only upon hir lawfull defence. This relation was knownen to be false, and was contrare to the probation adduced

already before the shireffs, and theirfore the Lords of Privy Councell did little regard it now, tho it was relevant in it selfe, but sent for Mr. Jo. Wauns, keiper of the Tolbuith, and ordered, under a severe certification, to keep hir stri&ly that shee escaped not, which was surmized shee intended. Shee was pershued by Mr. Ruthven and the other children of the party slain, and their curators.—Shee was a woman of a godleffe life, and ordinarily carried a sword beneath hir petticoats.—Hir affirming hir selfe to be with child was but a shift to procure a delay.—Mistris Bedford, who murdered hir husband, and committed adultery with Geills Tyre, was this Mistris Nimmo's cusing-german, and of the family of Grange Hamilton ; and they say the Ladie Wariston, who, about 100 years agoe, strangled hir husband, Kincaid of Wariston, shee was of the same family.—Baker, in his Chronicle of England, in the Life of Henry the 6, *ad annum* 1429, tells, the Maid of Orleans, to delay hir burning, feigned hir selfe to be with child.

On the 29 of September 1679, the said Christian Hamilton made hir escape in man's apparell out of the Tolbuith, in the glooming, about 5 a cloak at night ; but was the nixt day found at Falaw Milne, wheir shee had stayed, and did not haften to the English Borders ; and was brought back to the Tolbuith on the 1 of O&tober, and was beheaded at the Croce of Edinburgh on the 12 of November 1679, all in mourning, with a large waill [veil], and before the laying doun of hir head, shee laid it off, and put on a white taffitty hood, and bared hir shoulders with hir oun hands, with seeming courage eneugh.

18 & 19 *Septembris* 1679.—At Privy Councell the Lady Letham and No. 220, p.
Mr. Edward Ruthven's curators give in a complaint upon Lilias Forrester,^{84.}
Lady Torwoodhead, W^m Bailzie hir sone, William Gourlay, and others,
for intruding themselves into the house of Corstorphin, and impeding the
buriall, *contra leges 2. et 3. D. de in jus vocando*, and refusing to goe furth
of it, and beating the Lady Letham, and cutting the pleuch graith, albeit
Mr. Ruthven's curators ware in the civill posseſſion, and continueing the
naturall posseſſion that was in his father's persone, and wheirof they
could not be summarily dispossed.—Alledged for the defenders, that

by the tailzie of the lands of Corftorphin, made in 1649, by umquhile George Lord Forrester, failzeing of airs of James Bailzie and Mistris Jean Forrester, his eldest daughter, William Bailzie of Torwoodhead, and the airs to be procreat betuixt him and Mistris Liliias Forrester, the said lord's 2^d daughter, are substitute, and the nixt member in the tailzie, (of which see at large in another manuscript;) now their being no ishue procreat betuixt the said James, late Lord Forrester, and his first ladie, the tailzie exists, and the substitution devolves to Torwoodhead, and in 1650 he is *per expressum* infest as substitute air of tailzie, (yet this would not give him right without a service and retour, fince James Bailzie is fier by the conception of the tailzie, and Torwoodhead and his airs only airs of tailzie to him,) and so might lawfully possesse himselfe of the house, even as a fier may summarly enter, when a liferenter of his house dyes; but heir the last Lord Forrester was not a naked liferenter, but might contra&t debt upon the said estate of Corftorphin, and dispose upon it to whom he pleased; and it's affirmed, he hath made a disposition of it to Edward Ruthven, his sone of the second bed, and in such a case the air of tailzie ought not to enter summarly, but the air of line of the last fier may continue their father or prædecessor's possession, till they be put from it by the air of tailzie by law. 2^{do}, Alledged, their staying in the house was only to see the chartor kist, wheirin they had interest by the tailzie, might not be imbecilled but secured.—The Lords fand matter of ryot in the complaint, and admitted it to probation, and though it was slender, yet they commanded the Ladie Torwoodhead and hir sone to go and ly in prison during their pleasure, and reponed Mr. Ruthven's curators, (he being out of the kingdome,) to the posseffion of the house; ordained Mr. Gourlay to pay 100 lb. Scots of fyne, and to goe to prison, their to remain till he pay it. The Lord Elphiston, and Mr. Richard Maitland of Dudhope, 2 of the curators and councellers, interceeded with the Councell to remit that part of the sentence against the Ladie Torwoodhead and hir son, which the Councell did at their desire. The Lords of Councell alſo ordained the chartor kist to be secured and inventared, and referred the point of right as meerly civil to the Judge Ordinar the Seſſion. (Vide Foster's escheat *supra*, page 68.)

19 *et* 20 *Septembris* 1679.—Thir dayes their was a great debate at No. 221, Privy Councell: His Majesty, by his indemnity, had pardoned the lives of all them that had been at the Rebellion in June laft, (except minifters, heritors, &c.,) providing theſſe of them that ware within the country ſhould compear before ſuch as the Councell ſhould appoint, betuixt and the 18 of September, and give bond in this forme, that they ſhould never heirafter riſe up in armes againſt the King's authority. Very few of them having compeared and offered themſelues willing to ſigne this bond, General Dalzeill, the King's Advocat, and ſome others, contended they had forfault the benefit of the King's pardon, and ſo might be lawfully proceeded againſt as rebels. The President, Craigie, Abotſhall, and others, plead,—It ware hard to conclude 3 or 4000 poor peopple under ſo cruell a certification, upon the circumdu&tion of a terme wheirof they might be ignorant, or might be ſick, or have ſome other reasonable excuse. That the King had been mercifull to them, and it was not fitt for the Councell to defait and diſappoint his goodneſſe; and theirfor it ware juſt to prorogate the tyme, and give them yet a farther dyet, betuixt and which they might all be adverтиſhed to come in, and know their hazard; and not take advantadge of ſo great a multitude. Then it was urged, that none might be reponed but ſuch as ware able to inſtruct a legall impediment, why they came not in betuixt and the ſaid 18 day. But this was obje&ted againſt, as ſo difficult, that it would render the favor utterly ineſſe&tuall. At laſt it was agreed on that they ſhould wryte a letter to his Majesty, repreſenting the caſe to the King, that he might authorize and impower his Juſtices in the Circuit Courts, in Octo‐ber nixt, to take their bonds in the reſpective ſhires as they goe throw, tho the firſt day affiſned them be expired, which ſome judged too ſhort, in ane affair of life and death of ſo many.

On the 6^t of November 1679, at Privy Councell, their is a letter from (ib. marg.) the King red, allowing the Juſtices of Peace in the feveller ſhires, to take bonds of theſſe who ware in the late Rebellion, notwithstanding the day formerly affiſned them for doing it was elapſed, providing they ſhow a rationall excuse of ſickneſſe, ignorance, absence, or the like, why they took it not within the 18 of September, formerly limited.

2^{do}. Thir dayes, severall of the non-conformist ministers who ware not in the rebellion, applyed to the Privy Councell to be licenced to preach at particular meeting-houses, conforme to the tenor of his Majesties indulgence ; and accordingly their was 7 admitted,—Mr. George Johnston to Newbotle, Mr. Luke Ogle to Langton, Mr. John [William] Row to Sires in Fyffe, &c. It was enjoyned them not to affume or attempt to preach in the churches, but in meeting-houses. The Bisshop of Edinburgh would have had them instru&tng wheir and when they ware ordained to the ministrie, with fundrie other qualifications ; but the Councell found them such clogs, as, if they ware strictly required, few or none of them would have been able to have past muster. All the forme of the bond required of them, and put to such heritors of parishes as gave them a call, was, that they shoule live peaceably, and appear when the Councell called for them.

3^{ro}, *Eodem die*.—William Cockburne, merchand, gave in a bill to the S. Councell, representing that he was banished the 3 Lothians in December 1674, (see the other manuscript, folio 236,) for some expreſſions in a letter reflec&ting on the Vicountesse of Oxenfurd, and that his Majesty, by his late indemnity, had pardoned all pasquills, infamous libells, and ſentences of the like nature, and remitted them both *quoad vindictam publicam et privatam*, and commanded his indemnity to be extended by his judges, with all favor and latitude, &c. ; and theirfor craved their Lordships would declare he was free theirby, and discharge Oxenfurd to trouble him, &c. The lawyers in the Councell contended the a&t of pardon did not reach his caſe, being *res judicata inter personas privatas*, for a private injurie done by him to that ladie, without any relation to the publick concernes, and that the fyne imposed by the Councell ware excepted from the indemnity ; and tho this was not *multa pecuniaria*, yet it was a fyne in *suo genere*, a confinement ; and theirfor they refused his bill. Some thought this caſe might, without much wrong, haue been included in the indemnity. The King's pardon in England does not comprehend private offences : (ſo Styles in his practicall register, *voce pardon*, page 433.)

THE CIRCUIT COURT.

8 et 9 Octobris 1679.—On thir 2 dayes was a Justice-Air, *Iter Justi-* No. 222,
ciarieæ, or a Circuit Court, held at Edenborough, by order of the King and ^{p. 85.}
his Councell's proclamation, at which place, past memorie of man, their was
no Circuit held ; nather indeed needs their, it being the center, and the
ordinarie seat and residence of justice ; and the designes of thesse Circuits,
(which vide *alibi* of the circuit held nyne years ago in Aprill 1670, and
of David's Circuit Courts thorow Israel, in another manuscript, p. 85.)
in France they are called *les Grandes Jours* ; and in England, their
country Circuit Affizes, or Justices in Eyre, are to warme and influence
thesse parts of the nation that are remote from the places of judicator, and
wheir malefactors stand lesse in aw theirof. Many think this Circuit hath
been very expensive to Scotland, and to have been more than a year's cesse
out of their purse ; and yet they dispatched litle or no businesse, but con-
tinued or deserted dyets, wheir peeple had been calumniously dilated, and
none appeared to informe his Majestie's Advocat. After a sermon made
by Mr. John Robertson, with sound of trumpets and guards, they took
their place in the utter bench of the Parliament House. First, the
Court was fenced in the King's name, and all forbidden to disturb the
same ; then the Justice-General, Justice Clerk, and remanent Com-
missioners of the Justiciarie, their last patent and commission from his
Majesty, dated in November 1678, in Latin, was red, which bears a *salvo*
of the Lords of Regality their priviledges ; yet I hear that regalities, tho
they repledge from Justice Courts, yet not from Circuits. Then the suit
rolls of all the suitors *sectatores* within the 3 Lothians, that is, the free-
holders of the King, tho they be but petty fewars, ware all called, as being
commanded to give suit and presence at Circuit Courts, as weell as head
courts ; then the 45 upon the affise ware called ; then the witnesseſ ſum-
moned for proving each particular cryme tane up in the portuous roll
(ſee concerning this word, Skeen *de verborum significatione, voce Porteous*)
ware called. The suitors or King's waffalls, the affyſers and witnesſeſ ſum-
moned, ware unlawed and amerciat in 100 lb. Scots ; at ordinar Justice-

Courts it's but 100 mks.; some ware excused, as Sir A. Ramsay of Waughton, &c., upon testificats from ministers or physicians, of their ficknesse or other indisposition; but the Justices required them to be, on soull and conscience, which declaration physitians scruple to give, as being sworne to the calling *in initio*.

1. They had 4 meetings in the 2 dayes. At the 2^d meeting ware called all thesse that ware pannelled for not putting out their full proportions of the militia, to be fyned conforme to the fynes imposed by the 2^d A&t of Parliament in 1669, and the 1 A&t in 1672, and the Councell's proclamation in June laft, 1679; but finding it so slender and inconsiderable a point of dittay, if anie at all, they referred them all to be pershued before the shireff, commiffioners of the militia, and other judges ordinar as accords. Then ware called the heritors, ather holding of the King or others, who ware pannelled for staying at home, and not going alongſt with the King's hoift to Bothuelbridge against the rebels in June laft, according to the Councell's proclamation. Some ware within 16, others past 60; ſome ware then ſick, others ſent out their beſt horſe with a man, &c. However, the Justices continued the dyet againſt them all till November nixt.

2. Then one James Bartilman was called for murdering of one Smith, ane old man, in Salton wood, on the 8 of September laft, by braining him with a ſtone; he had confeſt it before the shireff-deput of Haddington, but he was not a judge competent after 3 funs, tho he was tane in *flagranti crimine*, at leift a little after; the horror of the fa&t having then mollified his heart; but before the Lords Justiciars he began to retra&t, and to ſay, that the old man was coming to ride on the horſe behind him; and the horſe being ſcare, he twice threw him of, and ſo he brock his neck, and he threw a ſtone in anger at the horſe, but it lighted on the man's head, and his neck was broken before. Tho many thought he prævaricated, yet amongs the Jews he would have got the benefit of the city of refuge, as a caſuall murderer, and in England, of the clergy and neck-verſe. Mr. John Eleis, out of pitty and commiſſioneration, (for *quilibet*, tho unemployed, is *idoneus defensor* of ane pannell,) undertook his defence, and alledged, (having called for the executions) that he had not gotten 15 free dayes.

2^{do}, Had not gotten the full list of the name of his affysers and witnessses. Answers the King's Advocat, he neided not, 1^o, Because he brings him out of prison, being tane reid hand, and in that case he may judge him in 24 howers; and Messrs. John Kid and King and 100's of others, got no more, and this ware to question the justice of the nation, as having illegally execut them. 2^{do}, In the case of a portuous roll at a justice-air they neid not. Replyed 1^o, In thesse cases it was not objected. 2^{do}, King and Kid ware pershued for treason, which cryme is priviledged even as to citation, probation, &c. 3^{do}, The fixteint A&t of Parliament in 1672, regulating the Justice Court, without any distinction ordains all pannells to have a competent space, (tho it mentions not 15 dayes,) and to have the affisers and witnessses names, *Ergo nec nos distinguere debemus*. And the same A&t appoints the Circuit Courts with one breath, and how shall they have objections ready, if they know not the witnessses or affisers names till they come to the bar? so that it is one of the most just laws that can be made for security of our lives and fortunes, and is indispenfible. The Lords (tho this fellows blood was designed as the sacrifice for this circuit) yet demurred so on thir dilators, that they ordained him to be tane back and keipet in close prison, and continued his dyet till November, and in that tyme he may know both his affysers and witnessses names. Thus was he pulled out of their jaws for a tyme, and even the relevancy of his confession will be somewhat debateable.—On the 14 of November 1679, the said James Bartilman was found guilty by the assise, and was hanged on the 19 of November theirafter.

3. Then ware called such as ware pannelled for adulterie, who ware very numerous; but most of them ware absent, and denunced fugitives. The forme was—"The Lord Justice-General, the Lord Justice-Clerk, and the remanent Lords Commissioners of his Majestie's Justice Air, adjudges and decernes, A. B. and C., as fugitives from his Majestie's law, and ordaines all their moveable goods and geir to be escheit and inbrought to his Majesty's use, for their contempt." The Provest of Edinburgh (who waited upon them, and sat in a chair besyde them,) protested in behalfe of the regality of Brughton and the Canongate, belonging to the good Toune, that the escheits of such as dwelt within their said regality and ware de-

nonced, should belong to them; which protestation was admitted; (see Hope anent this point.) Some had remissions for their adulterie, which doe now too frequently passe of course; some had signators componed, but not past the sealls; they ware ordained to find caution to exped it betuixt and a day: some ware continued. I alledged for George Young in Winchebrugh, that that part of the dittay (for in the portuous rolls at Justice Airs they have not full libells and indytments, but only a summarie abridgement of the cryme,) that he conversed familiarly with Margaret Bailzie, Torwoodhead's daughter, was nather relevant nor criminal in law *per se*, unleſſe it ware taken complexly with that other member, that in the copulation betuixt them their was a child borne in 1677; and even their they ought to condescend on tyme and place, and the moneth at leift, ſince he might prove *alibi*.—The Advocat declared, he was not ready to infift. I urged he might be put to the knowledge of ane affyſe, ſince he was moft calumniously dilated, and was conſcious of his innocence, and diſaffented to a continuation or to a deferting of the dyet, ſince their malice might trouble him afterwards, by raifing a new libell. The Lords, without a perſhuer infifting, found they could not put him to ane affyſe; but deferted the dyet ſimplicker, and diſcharged any new letters to be raiſed againſt him, except the warrand of them ware ſubſcryved by a quorum of the Lords, which is 4, and that the perſhuar fand ſufficient caution to infift. One Cuthbertſone in Lithgow at the taking up of the rolls, named himſelfe as one of whom the neihbours ſuſpe&ted of adultery, but he denied it.

4. Then thoſſe pannelled for witchcraft ware called. One of which, named Jonet Hill, in Leith, having got hir citation to appear, did, on the 26 of September 1679, hang hir ſelfe, and was dragged at a horse taill to the gallow-ley, and buried under the gallows. A man called John Scot, in Leith, and a woman called Chouſley, in Preston pans, compeired, and the dyet was deferted in regard their was none to infift.

5. Then David Oswald, fone to Mr. Androw, and ſome others, ware pannelled for reſetting tennents who had been at the rebellion, and who had not taken the bond. He was ordained to goe to priſon till he found caution to appear at the nixt dyet.—Catharen Sinclar, fister to Mr. John [Sinclar], miſter at Ormition, and ſome others, being conveined for hounding

out and sending people to that rebellion, and resetting them since, and threatening and abusing them who went with the King's army, and refusing to sell them powder and lead, &c. They denying it, the King's Advocat offered to refer it to their oaths. Answered Mr. Pat. Home, It was criminal, inferring life and limb, and *nemo tenetur jurare*, &c. Replyed, Sir John Nisbet in 1674, when he was Advocat, proctred a letter from his Majesty bearing, wheir crymes by the statutes and Acts of Parliament have a definit and determinat paine, it shold be lawfull for his Advocat to restrict the paine to ane arbitrary and pecuniary mulct. Duplyed, 1^o, No such letter produced, and *de non apparentibus et non existentibus idem est judicandum*; 2^o, It seimes contrarie to law to alter A&ts of Parliament, yet the King may give a remission, or discharge their fyne for a 6 pence. The Lords continued them under caution; for some of them it was alledged such a man could not be a witnesse because he was informer. Replyed, 1^o, *Non relevat*; 2^o, The Advocat insists alone.

6. Nixt one John Rutherford, bailzie of Preston, and sundrie others, ware called for buying the gentlemen's corne about with a false firlot, being larger than it ought to be. Alledged, that *estia*, they had used a false measure, which they deny, yet they ware *in bona fide*, seing they offer to prove by the same witnesses the Advocat shall adduce, that they bought and sold with a publick firlot belonging to the toun of Preston, marked with the Laird's mark, and ouned by his Baron Bailzie, to whom the care of metts and measures is concredited by the A&ts of Parliament, and if it ware a false measur the Baron and his Bailzie most be first punished for it. The Lords continued the dyet, and ordained the measure to be produced. What if one using a false measure should afterwards break it in pieces, the cryme might be proven by witneses against him without production of the measure?

7. Theirafter the dyet was continued against the Papists, hearers and sayers of messe, the Quakers, and others who ware pannelled for their perverse judgements and opinions.

8. Theirafter, ware called such as have been at Feild Conventicles since the King's indemnity in August last. Item, Thiesse who ware in the rebellion in June last at Bothuell Bridge; some of them who ware

in prison ware convened for treason: and to cut them off from the benefit of the King's pardon, (for *qui utitur principis gratia vel clemencia fatetur crimen; yet quaeritur, If that will hold in public indemnities, as weell as a private remission?*)—they libelled against them rifling of houses, and stealing of horses and armes. See the Informations contending, thesse being done *in cursu rebellionis*, are also consequentially pardoned. Thessem in prison ware continued to another dyet; of the rest, some compeared, and told they had taken the Bond before the day limited, viz. the 18th of September, and ware dismissed. One of them queftioning and doubting whether it was a rebellion or not, was threatned to be sent to prison;—the awe made him change his note, and confesse it was a rebellion. Some hundreds ware denunced fugitives. After which the Justice-Generall advertised all of harboring or refetting them, since they ware now traitors, and in law might be killed *privata autoritate*; for *bannitus ob perduellionem potest impune occidi*,—the refettors would be esteemed as guilty as themselfes heirafter; and took all who heard him to witnesse, how tenderly they had offered to them his Majesties royall pardon, if they would haye come and given satisfaction by taking the Bond, but they had moft contumaciously refused that gracious offer; And then thanked my Lord Halton, shireff, and the rest of the gentlemen for their attendance. Halton answered, They had done no more then what they owed to the King, and their Lordships, his substitutes.

9. There ware many other points of dittay upon which severalls ware pannelled, as regrattng and forftalling the mercats, and buying up vi&uall to a dearth, hamefucken, opprefſion, wrongous imprisonment, deforcements, shooting of doves, &c., and many others; the catalogue wheirof see beside me, as also in Skein's tractat of crimes, at the end of *Regiam Majestatem*. It fell to be quæſtioneſ, Whither usurie, muir-burn, ſteiping of lint in lochs, and ſuch like paenall ſtatutes, be pardoned and remitted by the King's laſt indēmniſty. His aſt of grace in March 1674, did pārdon them; but the King's Advocat affirmed they ware not remitted by this indēmniſty in Auguft laſt, which related only principally to 2 things; 1^o, To conveſticles and intercommonings; 2^o, To publict administrations and offices, and Walter Riddell in the Bill-Chamber cloathes himſelfe with it. It was

intimat to the heritors, to wait upon the Justiciars in ther going to Jedburgh to hold a circuit their, till the limits of Berwickshire.

Thus ended this Circuit, being but a ludibrie and shadow of justice: *Parturiunt Montes, nascitur ridiculus Mus.* The murderers of the late Archbisshop ware also called and denounced in absence, and they and the rest will be declared fugitives over the Croce of Edinburgh. It was questioned, Whither heritors, not as yet infect, ware obliged to goe to the King's hoist, or to attend at the Circuit Court, and who ware naked fiars, their being a lifreenter of the wholle, or who had only *jus revercionis*, it being wodset or apprysed? or if proper wodsetters ware bound to suit, and presence, or to goe to the King's hoist? In the old Criminall Registers, I find sundry producing exemptions under the King's hand, from raids, hoists, assises, &c., and the judges admitting them. At Jedburgh, it is thought they cannot medle with thefts and slaughters, because thesse belong to the Commissioners of the 2 Borders, under the great seall of both kingdomes, privative of all others. (See the forme of the justice air, drawen furth by Skein, in a tractat at the end of *Regiam Majestatem.*) In a Justice Court, no peremptor defence can be proponed in behalf of a pannell that is absent, for if he be not excused he most be denounced. See excuses for such as byde from the King's hoist in the Adjournall criminall books in 1587, and *passim alibi*; some are dead since the said tyme they ware summoned to attend, some had the King's licence, some ware at the raid, some ware then lying fick, some had a remission for their absence, some ware exeeemed as burgeffes of Edenbrugh, some had no land, at leift not ane oxengate of land, others fand caution.

WINTER SESSION 1679—NOVEMBER.

6 Novembris 1679.—At Privy Councell their is a letter read from his No. 226, p. Majesty, nominating Lieutenant-Generall Dalzeel Commander-in-cheiff of⁹¹ all the forces in Scotland, with power to him to act as he shall think fitt, and only to be liable and accountable to, and judgeable by, his Majesty himselfe; for Dalzeell would not accept it otherwayes; only he promised

and declared, that in difficult exigents he should take the advice of his Majestie's Privy Councell.

2. *Item*, the King's letter is also red, prorogating the day of the taking the Bond by such as ware in the late Rebellion last Summer, to the 1st of Januar nixt. *Vide supra, in margine*, at the 19 and 20 of September last.

3. Mr. Maitland is sent, in name of the Privy Councell, to compliment the Duke of York, who was now upon his way towards Scotland.

4. This same day, Sir Patrick Nisbet of Dean was proceſſed for being at a field conventicle. Alledged, It was only a house meeting ſince the King's proclamation of Indulgence, and ſo fell under the compaffe of the law. Réplied, 1^o, It was a feild conventicle, for there ware ſeveralls without doors; but I think this cannot be a good mark of a feild conventicle, elſe, whow easie a thing ware it for the ſouldiers or biftchops to hyre 8 or 10 men to ſtand without doors at their licensed meetings. But 2^{do}, it was replied, Eſo it ware no more but only a house conventicle, the King's indulgence hath not permitted them, but only wher upon application to his Privy Councell, they are eftablifhed, and this was no ſuch meeting. Duplied, The people understood the pænall ſtatutes to have been diſpenced with and relaxed in ſo far as concerns house meetings two miles from Edinburgh, and his Majestie's proclamation of indulgence ſeimes only to militate againſt and to prohibit feild conventicles. Yet the Councell inclined to find that, notwithstanding of the ſaid indulgence, they might yet puniſh and fyne house conventicles unliſcenced by them. Some tryed out, that this diſappointed his Majestie's favor of the indulgence; but it is the non-conformiſt's oune fault that doe not addrefſe to the Privy Councell for a licence. However they found the libell relevant againſt Sir Patrick, and repelled his defences, and admitted the complaint to probation. But, though the thing was true, yet the probation was ſcrimp; and ſo he narrowly eſcapèd, having bought the friendſhip of ſome great ones.

them, at great length, besyde me, which deserve to be red, only I shall adde heir a litle farder. 1^o, It was alledged for them that, by the 125 A&t of the Parliament in 1592, they ought to get their citations for treason by a herald, macer, or perfevant, with sound of trumpet and ther coats on. This had been repelled in the case of the prisoners taken in 1666, for rysing in armes at Pentland hills, and fell not to be debated heir, because in the citations given them, this solemnity was used; at leist the executions boor it. 2^o, Alledged, all citations, by the 85 A&t of the Parliament held in 1587, should be given in day light, before the sun set, and not after sun set, as this was. 3^o, It should have been on 15 dayes, wheras heir they have not got 24 howers, in regard they got ther indytments on Saturday late at night, to compeir on the Moonday theirafter, so that Sunday is not to be compted as a free day, wheiron they could seek ane exculpation; and by the 6^e chapter of the 1 book of *Regiam Majestatem*, all citations should be on 15 dayes. Answered by the King's Advocat, thesse acts duely considered doe not relate to criminall affairs. Then 4^o, it was alledged they ought to have gotten the full copies of their confessions they had emitted, and which the Advocat declares he will make use of against them, *in modum probationis*. Replyed, he is by no law oblidged to give them the double of the probation, but only of the libell. The Lords of the Justiciary repelled all thir defences, and sustained proces: But if this came heirafter to be urged, as a preparative and *practique*, it may be answered, that their are 3 specialties heir: 1^o, Thir patinells had got indytments 2 moneths before this for the same crymes; and it was *ex gratia* that new ones ware given them, they not being substantially different from the former. 2^o, It was in perduellion and treason, and so is priviledged; some alledges this crime hes no priviledge as to the *inducere deliberatores*. 3^o, They ware in custody and prison, and so may be the more summarily brought to the bar. The Justiciars tryed the prisoners with great lenity; for they took them in severally one by one, and obtested and intreated them to take the Bond, never to rise in armes heirafter against the King, nor his authority. The moft part of them finding ther hazard took it;—only 6 of the 30 refused, viz. one Broun, a tutor in Edinburgh, one Sword, one Weddell, one Wood, one Hardy, and one [Clyde?], who being all

put to the knowledge of ane inquest, five of them ware, by the verdict of the assise, returned guilty ; and the sixth, viz. Hardy, was clenged and affoizied, because his confession did not bear that he was actually among the rebels, but that he was only taken in Fyffe. However, he had refused to take the bond never to rise in armes, or to call that rising a Rehellion. One of the five his confession only boor, that he was taken prisoner on the field, but likewayes declared he had no armes ; yet he was found guilty : naked presence in treason being criminous, except you exculpat and purge it by proving it was casual, by falling accidentally in amqngs them, or involuntary, by being taken prisoner by them, and so detained, or the like excuse. The Justices by their sentence ordained the five condemned to be hanged, upon the 18 of November nixt, in chains in Magus-moor, to expiat and appease the Archbisshop's ghost, who was their murdered. For though they ware none of the immediat actors of it, yet they ware aceefforie, for they would not call it a murder. And though this was only ane error of ane ill-informed judgement, yet being conjoyned with the Rebellion, it seryed to justify the æquity of the sentence. Their being ane informality in the warrand for executing them, it was delayed till that day eight dayes, and then performed. Of old, by the law of King William, and *Regiam Majestatem*, if a theiff broke the rope, he was free ; but this providence did not save them.—Within a few weeks their bodies ware stollen away and buried, and the gibbet throwen doun : which act of humanity we find was done to Saull's body by the men of Jabesh-gilead, in the last chapter of the 1. book of Samuel. No inquiry was made after this, though it was called by the Bischops an insolence, and affront put on authority.

No. 240, p.
95.

15 Novembris 1679.—Three hundred of the prisoners taken at Bothuel Bridge, (and retained of the twelve hundred that ware taken,) and who ware appointed by his Majestie's letter to be sent and banish't to the Plantations, (the rest being all dismissed,) ware this day shipped aboard for Virginia or Jamaica :—and by storne of weather ware shipwrack't and broken upon the coasts of Orknay or Sheitland, and all drowned but some 30 or 40 men.

4 Decembris 1679.—Post Meridiem. The Duke of Albany and York No. 256, p. 99.
 took his seat in our Privy Councell, and voted without taking the oaths of alledgeance and supremacy, contrarie to the 11 A&t of Parliament 1661, ordaining all Privy Councillors to take the forsaids oaths. But ther was a letter from the King dispensing with it, and declaring that A&t of Parliament extended not to the King's family, or to the appearand or præsumptive air of the Croun. But it may be doubted if the forsaide A&t of Parliament may be dispenced with by the King alone, and if it be solely introduced in his favors, and so may be relaxed by him; or if the security of the peopple, and of our religion, be not also concerned and wrap't up theirin. For though it be the King's Councell, yet it is for the good of the subje&t, and the A&t is generall, and *qui omne dicit, nihil excipit.* And in England they would not so tamely goe over ther A&ts and admit him to sit in their Councell, without the oaths. And Shaftburie gave præcedents wher the appearand air of the Croun did swear the alledgeance.—See *ulibi* in November 1680, page 6, anent the House of Commons desire against the Duke, in my Historique Remarks.

9 Decembris 1679.—At Privy Councell, David Fergusson, as tutor to No. 261, p. 100.
 his grandchildren, craving that Sarah Keir, his daughter-in-law, and ther mother, may be decerned to deliver them up to be keeped by him, as also to modifie ane aliment to them of ther mother's joyniture. Answered, ther was a civill proces depending betuixt them before the Lords (*vide supra*, page 94) for recovering hir joyniture. The Lords referred it to the civill judge, to be summarly discussed, and superceeded to determine ane aliment till the event of the said civill proces did make it appear what means and estate the children had unlifrented on their mother or goodfise.

11 Decembris 1679.—William Cockburne (of whom *vide supra*, p. 85) No. 265, p. 101.
 is this day fyned at Privy Councell in 5000 m&s., for breaking his confinement, and imprisoned till he pay it, altho he had a very probable ground of error to think he was included in the King's indemnity.

18 Decembris 1679.—At Privy Councell ther was a motion, to take No. 272, p. 105.

5000 foot, and 500 horse, out of the 22,000 men of the Militia, and modell them to be standing forces under pay constantly, wheirof the country should bear one halfe, and the King the other; and, that the expence may be the more easie, that they should have no captains, but only lieutenants.

2. *Item*, The Magistrats and inhabitants of Perth, who ware declared incapable about a year ago, are now reponed, and the sentence found pardoned and taken away by his Majestie's general indemnity in July last.

No. 277, p.
106.

19 Decembris 1679.—At this time the proposall was made, [at Secret Councell,] of selling wheat, bear, oats, meall, and all other grain by weight, as that which was the most just and æquall way of measuring them, and freest from all fallacy and deceit; wheiras the selling them by pecks and firlots was exposed to false mets and measures, to the tizing up of the meall, which is ane art in the mercat, and to other such cheats. A litle after this, ther was ane Act made upon it by the Privy Councell, and printed. *Vide* 10 Feby 1680, et 5^o Martij 1680.

No. 279, p.
106.

24 Decembris 1679.—The Act of federunt against solisting of the Lords is revived. *Item*, About this same tyme 5 witches and a warlock are condemned and brunt at Borrowstounnesse, upon ther spontaneous confessions, emitted without any torture.

No. 282, p.
107.

2 Januarij 1680.—Mr. [William] Abircrumbie, minister at Maybole is imprisoned by the Lords, because he offered to take the Earle of Caffills with caption for 2 years stipend he was owing him after he had presented a bill of suspension, and ther was a verball stop of execution. The bishops somewhat resenting this usage, he being a conformist minister, they got him liberat the nixt day.

No. 286, p.
108.

6 Januarij 1680.—At Privy Councell, an order was made, that the gazetts and news letters red in coffie-houses, &c. be first presented to the Bisshop of Edinburgh, or any other Privy Councillor, or to the Clerks of Councell, that they may consider of them, and therby false and seditious news and slanders may be prevented.

8 Januarij 1680.—The Duke of York in Counsell declared his dissatiſfaction at protecſions, which, both by A&ts of Parliament and Privy Coun-<sup>No. 288, p.
109.</sup>cell, with us, and in all weell governed nations, are prohibite, as great ſtops to the free current of justice. Therfor, they now forbear ther odious name; and when they grant them, they are now termed licences.

13 Januarij 1680.—At Privy Councell, a complaint was given in by the shireff of Roxbrugh againſt the toun of Selkirk for making opprefſive <sup>No. 293, p.
110.</sup>ſtatutes within their brugh, that no citizen perſhuе before the Shireff or registrat bonds but in the toun court-books; (*vide supra*, page 52, George Young and Mr. John Hay.) *Item*, Ther was a complaint againſt the toun of Lanrick, for ſuffering ſuch as had not tane the declaration, to fitt in ther Toun Councell, yea ſome who ware in the late rebellion.

Item, Ther was a bill given in againſt Miftris Macgill, for exhibiting ſome retired bonds and other papers that ſhee had boasted ſhee had of my Lord Oxenfur'd's, which ware of moment, and lying beſyde hir husband when he dyed:—*vide supra* hir brother W^m Cockburne's caſe and impri-ſonment, page 85 and 101.

21 Januarij 1680.—John Maitland, 2^d ſone to my Lord Halton, having married my Lord Kilmawer's daughter, and Stewart of Kirkhill's grand-child, obtains from the King the gift of my Lord Cardroffe (who had married Kirkhill's other daughter) his lifrent eſcheat upon a horning, wheirof Cardroffe had payed the debt, but negle&tēd to relax or take a gift. The narrative of the gift proceeds upon 4 or 5 grounds of æquity, viz. the great services done by the donator's father, and his unkle, the Duke of Lauderdale, and ther predeceſſors, and other good offices done by them to the croun. *Item*, For the worthy memory of Chancelor Glen-cairne, hir grandfather: *Item*, Because, contrare to law, the equall halfe of Kirkhill's eſtate, by tailzies, and backbonds, and other ſuch fraudulent means, hath been conveyed away from the Ladie Kilmawers and hir daughter, (to whom the halfe of the ſucceſſion, by the laws of God and nature belonged,) and are enhanced by my Lady Cardroffe and hir Lord, &c. *Vide infra*, page 126 and 156.

No. 300, p. 22 *Januarij* 1680.—^{112.} Their is a wager betuixt 2, that one of them shall pay 100 dollars if such a ship arrived at Leith on such a day before 11 a cloack at night; the ship comes in much sooner, and before 11 a cloack at night goes out of the harber again. The party promiser being pershued for the 100 dollars, alledged he was free, for the ship was not ther at 11 a cloack at night. Answered, It was ther sooner, which satisfied the condition, and the *tempus adiectum* was in his favors.

No. 313, p. 31 *Januarij* 1680.—^{117.} In the action betuixt Hamilton of Bangour, and Mr. Alexander Hamilton, upon the Ladie's lifrent, a bill having been given in against Mr. Will^m Hamilton, advocat, for exhibiting summarly some writs in his hands because he was a member of the house; the Lords, *maxime refragante Praefide*, refused it, because he had not thesse papers configned in his hands as ane Advocat, but as uncle and tutor to the children, and heir was to be confidered *tanquam quilibet*.

No. 315, p. *Eodem tempore*.—At Privy Councell, Mr. William Moir of Hilton,
^{117.} Advocat, pershued Udney of Auchterallan for defacing and destroying his desk in the church of Ellon, wheirof he and his authors had been thesse 30 or 40 years in possession. The affair was remitted to the Bisshop of Aberdeen.

No. 320, p. 4 *Februarij* 1680.—Duke Hamilton raises a declarator against the toune of Lithgow, that he had the liberty and priviledge of a free port and harboury at his regality of Borrowstounenesse, and might load and unload ther, notwithstanding that the King's custome house, which had been thesse 30 years at Borrowstounnes, is now removed to Blacknes, and that the toune of Lithgow are building a peir and harbory at Blacknes. Alledged by the 84 Act Parl. James 4 in 1503, and 24 Act Parl. 1633, the merchands most only pack and peill at free burrows; now, loading and unloading is the same thing with packing and peiling. This was denied by the Duke's advocats, who called packing, the stowing of goods in packs, and peiling, they did not agree what it mean't; some thought it was the furing and furing of goods like a pyle wood, and Borrowstounnes

is not a free brugh. Answered, by the 5 A& of Parl. in 1672, brughs of regality and barony have all the priviledges of brughs royall, except as to some staple commodities, and so may load and unload. 2^{do}, Blacknes is not so commodious a haven as Borrowstounesse is. Replyed, Since that fatall A& of Parl., the Borrows have ever reilled as exceedingly abridged in their priviledges; but it does not extend to this case, and Blacknes is a more convenient station for ships. This being advised on the 10th of Februar, the Lords, before answer, ordained a vifitation to be made of both harbories, and whither Blacknes is a more capacious and secure receptacle for ships then the other; as also probation to be led anent the town of Lithgow's poffeffion, and custome of going, loading, or unloading at Blacknes, or Borrowstounesse.

6 Februarij 1680.—W^m Naper of Wrichts-houſes being dead, one John No. 325, p.
Thomſon, ane officer in Edinburgh, being ſone to W^m's grandfather's
brother's daughter, gave in a bill to the Lords showing his right of blood,
and craving the cornes, cattell, and other plenishing on the ground and
house which ware perishable, might be ſequeſtred in ane reſponsall man's
hands till it ware found who had beſt right. The Lords granted this.
Then the Ladie Spencerfeild pretending ſhee was neareſt in blood, (but
now it is alledged the person from whom ſhee couples hir right was a
baſtard,) and competing, ther ware muthal bills given into the Lords by
aþer craving that their witneſſes (who ware very old perſoneſ) might be
examined to inſtruct ther propinquity of blood. The Lords refuſed this;
but ordained the witneſſes to be examined the tyme of the ſervice before
the inqueſt. Then, by bills, they craved, leift one ſhould ſteill furth
breives clandestinly, the other not being preſent, and ſo ſerve theiron, that
the Lords would ordaine them to be cummoned therto. The Lords diſ-
charged the Director to the Chancery to give furth any breives for ſerving
any of the parties contending till ſuch tyme as they firſt report to him
ane inſtrument, bearing that they have intimat by ane noṭtar to the other
party concerned, both the day, place, and judge before whom they are
to ſerve, that they may compeir and object if they pleafe.

Upon ane apprehenſion that ther was not an air within 10 degrees, Mr.

Andrew Fofter got the gift of his *ultimus hæres* for the Earle of Murraye's behooff; and the service being affixed to the 19 of March, and 3 Lords joyned as affessors to the macers on the said 19 day, the King's Advocat compeired for the donator's interest and produced his gift, and craved up the verifications of the contingency by writ, and the names of the witnessses, to see till another day; which, tho' unusuall, yet was granted, and the service was continued till the 23 of March; before which day ther was ane advocation of it past to the Lords, only to delay and wearie out the poor man, pretending that intricat points would arise on the probation, which none could decide but the Lords; yet ther was no such difficulty or importance but what the 3 affessors might have determined. *Vide infra* thir same parties, page 146.

No. 328, p.
120.

6 Februaryj 1680.—At Privy Councell, a great debate is stартed by Sir George Mackeinzie of Tarbet, Justice-General, anent the præcedency of his office, wheirby he acclaimed the place before the President of the Seffion, the Register, and all the inferior officers of State, which he founded upon the dignity of the office in ancient tynes. But then many civill matters, which ware determined by inquests, belonged to it. 2^{do}, They were ordinarily noblemen who possessed it. Nixt, he produced the extract of a letter out of the books of Privy Councell, sent by the King to them in 1637, ordaining the Lord Justice-General to have the same præcedency which the Lord Chieff-Justice in England possesses, who is *primus Judicum post regni Cancellarium*, and promises to ratify it in the nixt Parliament; but it was never done, and some thinks it will be decided against Tarbet.

No. 330, p.
121.

Eodem tempore.—At this same tyme, Burnet of Craigmyle, gives in a complaint to the Privy Councell, against Sir Alexander Forbes of Tolquhon, for practisifg his mother-in-law, and by privat and indirect methods procuring from hir exorbitant gifts and rings, and dispositions of what otherwayes would befall to him.

No. 331, p.
121.

9, 11, & 12 Februarij 1680.—At the Crimall Court, proces of for-faultor is led against — M'Dougal of Freuch, for being at the late re-

bellion in June last, (Grahame of Claverhouse hath gotten a gift of this forfaulter.) The probation was led in absence, conforme to the 110 A& of Parliament 1669 ; and for security, the witnessess to the execution ware sworne. They ware cited by sound of trumpet with the heralds and pursevants with their coats on ; and the doome of forfaulter being pronounced with sound of trumpet, their armes drawen in colours, ware torn and trampled on under foot, and then posted up reversed dounward, and they declared traitors, by sound of trumpet, over the Croce of Edinburgh, and their armes reversed affixed upon the said Mercat Croce and other publick places.

10 Februarij 1680.—At Privy Councell Thomas Robertson and 15 or No. 332, p.
20 mo brewars ware fyned, some in 500 m&s., some in 300 m&s., for not
^{121.} brewing sufficient 16 penny ale, and not giving in bonds to brew conforme
to the price of the vi&tuall, and to buy victuall by weight ; tho it was re-
presented in the debate, that the buying by measure was establisched by A&t
of Parliament, and so it could not be altered by any A&t of Privy
Councell. (*Vide supra*, page 106.) Item, Peter de Bruis Flandrian gave
in a complaint against the Earle of Winton anent the building of a
harbor at Cockeny, craving that the Lords of Privy Councell would
nominat some to visit it, and visit his pains, and modify against the Earle
accordingly. The Lords at first named a committee, but thereafter they re-
mitted it to the session, the judge ordinar, to be summarly discust by them.

19 Februarij 1680.—Gordons, elder and younger of Earleston, Gordon No. 349, p.
of Crachelay, and Binnie of Dalvenan, are forfault in absence, and ther
^{124.} armes torne and posted.

23 et 25 Februarij 1680.—At the Criminall Court the absents No. 359, p.
from the King's host in June last, to the number of 35 gentlemen
of Fyffe, are now pannelled. *Nota*,—This is not the third part of thesse
who ware absent in this shire of Fyffe, and ther is another indytment
raised against the rest. (*Vide* more of them pershued *infra*, page 146.)
They proponed first generall defences ; and Alledged, That they having

put out their militia, they ware not in law tyed to attend in person, the Parliament having consented to the militia in place of that servitude. This was not sustained. 2^{do}, Alledged, The proclamation calling them out was not published at the severall mercat croces, as it expressly bears and appoints. Answered, Their privat knowledge supplyed that defē&.

Their particular defences founded on specialities, ware first,—That some ware then sick. But the Lords fand testificats from ministers, phyfitians, officers of the army, &c. not sufficient, without witnesles ware adduced by ane exculpation, for *testibus, non testimoniis, est credendum.* (See in a 4^{to} manuscript, pag. 13, a pleasant story in *Philip Cominæus*, how Lewis the XI of France fyned some gentlemen for flieing from his hōst against the Duke of Burgundie; and they offered to prove, others ware spared who fled 9 miles furder off then they did.) 2^{do}, Though phyfitians pretend a priviledge not to testify upon soull and conscience, yet the Justices declared they would reje& all testificats that wanted it. Nixt, It was alledged for some, that they ware past the age of 60. This was found relevant, they proving it instantly, providing they had sent out their best horses and their best men weell appointed. 3^{do}, Some pretended they ware officers of the militia, and went out with it, or that they had lands in another shyre, and answered ther. Thir ware found relevant. 4^{to}, Hay of Balhousie founded his defence on a passe to returne, from the Marquis of Montrose, his superior officer. Answered, He not being in the King's guard, Montrose was not his officer. 2^{do}, Commanders have no power to give them licence to desert, else the halfe of the army may be dismissed thus. . . .—5^{to}, Alledged for Ayton of Inchdarnie, that he was *in recenti luctu*, his only son having been killed some few dayes before, upon a mistake, as if he had been one of the Archbisshop of St. Andrews his murderers, which he was not; and *Novella: Per novem dies non inquietetur qui proximi funus duxerat.* 6^{to}, Some pretended ther wives ware then lying dangerously sick, or neir the time of ther delivery, or that ther wives opposed and contradicte& ther going. This, in law, is not relevant. 7^o, It was alledged for others, that ther houses, ther armes, and ther horses, ware robbed and plundered, and so they nather could, nor ware oblidged in law to go on foot; and they could not at that tyme get other horses to

buy, they being all picked up. Because ther was a presumption of simulation in this robbing, that it was caused to be done by themselves, or at leist by ther wives, to hold them at home ; theirfor, the Declaration was proffered to them, as a testification of their loyalty, if they took it. But fundry of them declined it, and offered to purge themselves upon oath that ther was no collusion. Yea, some apprehended that ther defence upon sickneffe, at such a tyme as this, might be simulat. 8^o, Some denied they ware heritors, and so ware not oblidged to attend with the gentry. The Advocat craved they might then renunce all their heritage to the King, *ad remanentiam*. Answered, They ware not oblidged. Replyed, Wher one is pershuied for taxation, and denies he is ane heritor, then the Lords of Session oblidges him to renunce. 9^o, Some alledged they ware only appearand heirs, and not infect, and ware in possession of nothing, but all was lifrented. Answered, The right of apparenky forfaults by the 69 A& of Parliament in 1540 ; and so the King hes right to what they might succeid to. I hear wheir ther was a lifrenter and a fiar, the fiar was found liable to attend the King's hoist, and bear the expence of sending men : yet it would seeme much more æquitable that the lifrenter who possesseſſes should be liable for the *onera fundi realia* then the fiar. 10^o, Alledged for ſome, They ware only wodſetters, or only poſſeſſed *jure mariti*, or by the courteſy of Scotland, wher they had married ane heretrix, and ſo ware not heritors. Answered, Since the law was ſo courteous as to give them the courteſie, they ought to be ſo diſcreet and thankfull, as to defend the law and their oune country, and a courtier was *jure feudali et diſpoſitione juris, vasallus pro tempore, et ad tempus* ; and ſo was liable to all ſervices. *Queritur*, If a blench waffall, who payes his *reddendo pro omni alio onere*, may plead exemption from hofts and raids? certainly he cannot. 11^o, It was alledged for ſome, That they had no inheritance, but only ſome burrow crofts and ruides, and within 100 lb. Scots of yearly rent, and ſo ware not bound to goe out in perſon with the heritors, their rent not being able to ſustain them as horſemen. Though they ſhould goe and protec̄t their oune property, yet this exception ſeemeſ very relevant. I hear the Lords affoilzied them whosſe heritage was within 300 mks. yeirly, as not being able to keep a horſe on that rent. But what if

they have a good fortune *aliunde* in money? Some make a 100 lb. Scots of valued rent the rule; and if they have under that, then they are not obliged to attend hostis and raids. The old criminall adjournall books mention sundry excuses for such as absented themselves from hostis and raids. 12^o, Some alledged they ware merchants and burgeffes within a brugh royall, and watched ther. Answered, Since they ware landward heritors, they ought ather *refutare feudum*, or else serve the King for their land. The bourgeffes of Paris, and officers of the Parliament ther, are exeeemed from Ban and Arriere-ban; (which is the attending the King's host;) see Claude Ferriere's *Traitée des Fees*, page 18. 13^o, It was contended for some, that it was *res hactenus judicata*, for they had been summoned to the Circuit at Couper, and had ther gotten absolvitors. Answered, The dyet ther was only deserted, and that hindred not the raising of new letters. Replyed, It was more then a deserting, for it proceeded upon triall of the relevancy of their excuse; and being found just and proven, it was admitted, and they affoilzied. 14^o, Alledged for some that ware absent from the bar, that they ware lying sick, or that they ware dead since June last, or that they ware within 16 years of age; for the law condescends on all heritors betuixt 16 and 60. But thesse ware repelled as not instantly verified, and they ware fyned. 15^o, Some alledged, as Fordell Henderson, &c., that they ware of unquestionable loyalty, but ware unable to travell on horseback, for the gout, gravell, &c., but they sent one more sufficient then themselves. Answered, Their serving *per substitutum*, did not exoner: (which see debated by Craig, *diegisi 1. libri 3, Feudorum in principio.*) 16^o, For Lindsay of Dowhill alledged, that, by a command of Privy Councell, he was ordered to attend them and their dyets, at the same very tyme that the heritors ware called out. Answered, *Posteriora derogant prioribus*, and the proclamation calling the heritors out, was after that act of Privy Councell, anent him; and he shoule have obeyed the last. Replyed, Their proclamation was only generall; their order for his appearance under the paine of 10,000 merks, (which was uncertain when they might call for him,) was speciaill, and *in toto jure generi per speciem derogatur: L. D. de Regulis Juris.*

Besydes the forsaide remarks, having got ane summary Abbreviat of the

defences and debate, with the Interlocutors following theron, as they are recorded in the Criminall Adjournall Books, I thought fitt to insert them also for the more superabundance here. The first generall defence is, that the 4^t A&t of the 1 Parliament King James I. founded on, anent the refusing to inforce the King against nottor rebels, most be construed and understood only of rebels ather convict or declared fugitive ; and the 25 Act 2^d Parliament James II. relates only to weaponshawing. 2^{do}, That the proclamation was not intimat to the heritors and lieges at the Mercat Croce of the head brugh of the shire of Fyffe. 3^o, That the forsaids old A&ts ware made when the King had nather standing forces nor militia ; but now having both, the subje&ts ought to be exonered, and the saids A&ts not be founded on. 4^{to}, The King hes indemnified severall crymes, except thosse who did not affist his host. But they who sent out ther servants and horse did affist, &c. and so are pardoned, and cannot be per-shued. 5^{to}, They founded on a letter, alledged written by the Chancellor, in name of the Secret Councill, allowing such heritors as ware valetudinary, wanted horses, or had any other reasonable excuse, to stay at home and guard the country.—Thir 5 generall defences ware all repelled.

Then they came to the speciall defences ; and it was alledged for Bouffie,—That he attended the host with servants and horses, weell armed ; but being valetudinary, he procured a passe and licence to returne home, and left his horses and servants in his Majesty's service.

Hamilton of Kilbrachmont's defence is,—That his horses ware robbed from him by the rebels, and his servants ware sick ; yet he furnished himselfe with horses, and followed the Fyffe heritors to have served the King, but they ware returning after the victory ; and he offered to take the Declaration.

Law of Brunton's defence was,—That he was sick and bedfast all the tyme.

Nairne of Little Friertoun's defence was,—Sicknesse, and that all his estate was liferented by his mother.

For Lundy of Stratherlie,—That his horses ware robbed by the rebels ; and he was content to take the Declaration.

Sir James Sinclair, Kinninmond's, and Balbirnie's defence was,—Sicknesse all the tyme of the host.

Beaton of Bandon's defence is,—His ladie's dangerous sicknesse, his sending his servants and horses to the army, and his taking the Declaration.

Fordell Henryfone's defence is,—Corpulency, infirmity, and inability to mount a horse without help, or to abide the fatigues of a camp, and that he sent servants and horses.

Melvill of Cassingraye's defence was,—A licence from the captain to stay at home, his lady being sick, and he wanting horses.

Durhame of Largo's defence is,—His horses ware robbed by the rebels; he offered to rescue them by force, or to redeime them with money, but could not have them. He offered to give his oath that this was not collusion; but refused to take the Declaration.

Cowan of Corston's defence is,—His horses ware taken away; he is no heritor, but only possessor and factor of ane estate for his oun payment, and the payment of other creditors; but he refused the Declaration.

Balcanquall of that Ilk's defence was,—That his horses ware robbed; but shunned to take the Declaration, for fear of disquiet from his wife.

Nairne of Sanfurd's defence is,—That he sent his servants and horses; and being a captain of foot, he endeavored to conveen his company, but none coming save ten, his collonel adjoyned them to another company; and so his horses being gone before, he could not get himselfe furnished tymeously with others: and he refused the Declaration.

Moncreiff of Reidie's defence is,—That his ladie being sick, he sent ane expert souldier with his horses, who ware accepted of; and he had offered to goe himselfe if they had not been receaved; but he refused the Declaration.

Weymes of Glenniston's defence is the same with Sanfurd's.

Young of Kirkton's defence is,—His ladie's dangerous sicknes, and bitter curses if he should leive hir; and the appearance of abortion upon his offering to goe from hir; but he refused the Declaration.

Murray of Pitlochie's defence was,—That he bruiks his litle estate by the courtesie of Scotland, and the air is on life, &c.

For Dr. Sibbald—(See physitians exemption by the Imperiall Laws, *toto titulo Codice de Proffessoribus et Medicis libro 10, titulo 52.*) The Lords

inclined to think any eminent phyfitians ware exempt as to personall attendance, but thesse who ware salariat to attend the army, only they should have fent.

For Muirhead of Linhouse—It was alledged he was within 14, and so pupill, and could not goe, not being fencible. Yet some thought, in strict law, his tutors should have fent out a man for the land, even as one that is past 60 should doe.

The Interlocutors ware as follows :—The Lords Justice-General, Justice-Clerk, and Commissioners of Justiciarie, having considered the libell and debate forsaid, they repell the 1st, 3d, and 4th, generall defences *fimpliciter*; as also they repell the 2d generall defence, in respect of the intimation made by my Lord Newark, at the rendezvous of the Militia, conforme to the tenor of the proclamation, and of his appointing a rendezvous of the heritors at Levin; which accordingly was kept by a great part of the heritors. And as to the 5th defence, founded on the Chancelor's letter, the Lords superceeds to give determination theirupon, as it is proposed in generall for all, reserving to themselfes to determine theirupon, as occurs in particular. As also, they find the defence proponed for Thomas Hay of Bouffie, founded on the passe alledged on, relevant to asfoilzie him; and remits the samen to the knowledge of the assise. They also find the defences proponed for Robert Hamilton of Kilbrachmont, James Law of Brunton, Mr. Alexander Nairne of Little Frier-toun, Lundie of Stratherly, Sir James Sinclar of Kinnaird, Kinnimont of that Ilk, David Beaton of Bandon, Sir John Henderson of Fordell, Robert Balfour of Balbirney, James Melvill of Cassingray, &c. relevant. As also, finds the defences proponed for Alexander Durham of Largo, Charles Cowan of Corston, David Balcanquall of that Ilk, Alexander Nairne of Sanfuird, George Moncreiff of Reidie, and David Weimes of Glenniston, relevant only to alleviat the punishment, though not *in totum* to elide the libell, according to his Majeiftie's gracious letter. Then the Lords repelled the defences proponed for James Young of Kirkton, and Murray of Pitlochie; and therfor fyned them in two years valued rent.

Largo, Corston, and Balcanquell, ware unlawed in one year's valued rent. Sanfuird, Gleniston, and Reidie, ware amerciat in halfe a year's

valued rent.—The dyet was deserted as to Howburne of Menftrie, and Gideon Murray of Pitkeirie, and others, it appearing that they ware past the age of 60; so ther is small roume left for that quæftion, whither *annus sexagesimus inchoatus*, (as being *in materia favorabili*,) will excuse, or if they most be 60 complet.—The Declaration was offered to none whosse defence was fickneſſe, or who had any other defence that put them beyond a poſſibility of attending. *Vide infra*, page 142, at the 6^t of March 1680; the Louthian gentlemen who ware absent are pannelled, and the priviledge of Advocats exemption from raids and hofts is debated.

No. 363,
p. 130.

25 Februarij 1680.—There being a great clamor and outcry againſt the extortion used at the Chancellary, the Lords appointed a viſitation to be made, and the Register, &c. to try the abuses and exorbitant exactions ther. George Cockburn, the Depute, would not byde the tryall; and fo Sir William Ker placed John Campbell the wryter theirin. Some demand why they paſſe free for byganes, ſeing we hang men for very ſmall thifts? See more of this *alibi*.

No. 368,
p. 132.

28 Februarij 1680.—The Lords fynded John Inglis, advocat, for beat- ing Captain Gideon Murray, and calling him mensworn, in 500 mks., and ordained him to goe to priſon and to crave pardon.

No. 370,
p. 141.

2^{do} et 5^{to} Martij, et diebus ſequentibus, 1680.—At Privy Councell, a complaint was given in by Mr. Forbes, one of the Regents of the Colledge of Aberdeen, againſt the Bifchop of Aberdeen and one Mr. Midleton, alledging the Bifchop had, by terror and concuſſion, influenced the election of the Principall, and limited the freedome theirof, and procured Mr. Midleton to be choſen: *vide titulum D. de Concuffione*. Anſwered, The Bifchop, by the erection and foundation of the Colledge, is authorized to oversee the elections, and he did nothing but what is agriable to law, *et qui jure ſuo utitur nemini facit injuriam*: *L. D. de Regulis Juris*.

2^{do}, Upon the proclamation mentioned *supra* in December laſt, page 106, anent weighing the bear, &c., the Lords of Councell declared they would fyne the taverners if they ſold two pence ale; and they are or-

dained to take only ale from one brewar, &c. Wheirupon fundrie of them gave in a bill to the Privy Councell, craving a re&ification theirof. As also some of them came in, and, of ther oun consent, engadged to buy no bear this year, but what they should give two marks for every three stane of barley-bear, and two shillings sterling for every three stane of rough, (which compting fifteen stane to a boll, tho it will be more,) and this makes about ten merks for the boll of the one, and ten shillings of the other.

3^{to}, They made the A&t discharging the killing of wild-foull, and all hunting, hauking, and fisching, without licence from the Master of the Game for the shires therin nominat, which will lay a foundation for fyning.

4^{to}, The Act for reposessing Campbell Earle of Caithness unto the peaceable right of that estate, and that they should furnish him meat and drink as he travels thither.

5^{to}, The 5500 men to be modelled furth of the militia : (*de quo supra.*)

6^{to}, An A&t discharging the importation of brandee, rum, Brunswick-beer, &c.; and, after the first of November nixt, not to be drunken, as taking money out of the country, and hindring the consumption of our oun beer. It is feared this may be only a designe to palliat a monopoly of thesse liquors.

7^o, The four districts, or tetrarchies, of the Hielands, viz. Argile, Athol, Huntly, and Seaforth, and each of them, gets £500 sterling *per annum* to keep them quiet; a fifth is added, viz. the Earle of Murray, by a letter from the King, dividing Huntlie's jurisdiction in two, as too large; and they are all declared liable for the dammage and depredations shall be done within ther respective bounds. But thesse great men will not be very accessible.

6^{to} Martij 1680.—At the Criminall Court, some heritors of the three Louthians ware pannelled for absence from the King's hoist. James Eleis of Southsyde, Durhame of Duntarvie, and many others, ware fyned, some in 1000 marks, some in 300 marks, some in more, some in lesse, according to their valued rent; and the Lords proceeded with moderation eneugh.

2. In Mr. William Cheisleye's case, as heritor of Cowburne, the defence of his being a member of the Colledge of Justice was proponed by him, to exeeeme him from personall attendance at the King's hoift, and was repelled, as I hear;¹ but it was nather fully debate, nor the A&ts in ther favors shownen; and theirfor the Criminall Lords continued the dyet against Mr. Thomas Lermont, Mr. James Hunter, and the other advocats who ware conveened for ther absence, and had got indytments and citations for that effe&t, and they forboor to infist against them.

It may be alledged for advocats that they are not bound to attend hoifts and raids, at leift in person, if they send a horse and a man in armes for them; and ought not to be pershued for absence theirfrom: *Primo*, Because the Roman law exeeemes and priviledges them, *ab omnibus functionibus provincialibus*. *2^{do}*, They are liberat by an expresse A&t of Sederunt made by the Duke of Chattelleraut, Governor in 1545. *3^{to}*, In June last, the Lords sat all the tyme of the raid and campagne, and so Advocats could not warrantably desert their clients affairs, contrare to their oath *de fideli*, and of attending the Lords. *4^{to}*, By A&ts of Secret Councell then made, the Colledge of Justice ware listed unto a company to help to guard the toun of Edinburgh, and they choiced their captain, lieutenant, and other officers, and got armes from the Castle, and merched, and drew up, and used discipline.

No. 372,
p. 142.

Eodem tempore.—At Exchequer Sir D. Carnegie of Pittarrow pershues the Montrose burgesses for 6 pence of every pint of brandee sold and retailed by them, and which was due to his brother James as shireff-depute ther. Alledged, by the A&t of Parliament in December 1673, the importer is only liable for that imposicion, and not the retailler of it.

No. 373,
p. 142.

1 et 16 Martij 1680.—The Lord Bargeny was both thir dayes upon the pannell; and was, after much debate, continued and sent back to the Castle, on pretence that the Advocat wanted some of his materiall

¹ *Nota*.—This makes not against the Colledge of Justice; for Mr. W^m Cheisley is deprived from being a Wryter to the Signet: *Vide supra*, p. 127.

witnesſes for proving the indytment against him. As alſo, he gave in ſome additionall articles, anent his furniſhing men with armes to the late rebellion: See his dittay beſyde me.

13 *Martij* 1680.—The Lord Macdonald boaſts Sir W^m Sharp, and No. 374, p. threatens to cut the ears out of his head for delaying to pay him his pen-^{143.} fion, albeit the Councell had put a ſtop to it; for this a councell is called, and he gets a moderat rebuke.

2^{do}, The Chancelor goes for London.

28 *Martij* 1680.—Craigie dyes; and, 8 *Aprilis*, Mr. Maitland is No. 376, p. made Justice-Clerk; *de quo vide alibi*, my other MS. for the Session^{143.} traſactions.

8 *Aprilis* 1680.—At Privy Councell, John Kennedy, apothecary, and No. 377, p. one Leviston, a merchand in Edinburgh, are fynded; the firſt in 100 lb.^{143.} Scots, and the laſt in 300 merks, (because he had no licence,) for baptizing ther children in the toune, by one Mr. Gilbert Reull, a licenced and indulged minister; tho Mr. A. Turner had granted his permiffion for the doing therof; for which he was alſo rebuked by the Archbifchop of S^t Androis, his ordinary, the Bifchop of Edinburgh, being at London for the tyme; and Mr. Reull is ſent to the Baffe, because he knew, by his Majestie's indulgence, they are reſtricted not to uſe any part of ther ministeriall function within Edinburgh, nor two miles about it; and Mr. Turner's conſenting cannot excuse him. Theiraſter, in May, the Secret Councell was willing to change his confinement to the toun of Edinburgh, he finding caution not to preach in private ther; which demand, as being contrare to their principles, he refuſed to doe.

Eodem die.—James Justice of East Crighton exhibits a complaint No. 378, p. againſt Hepburne of Humby, for contraveining a prior A& of the Coun-^{143.} cell, and teilling up a grein hard before the ſaid James his house, which is indeed buiilt very neir the march, as many houſes of old ware ſituat. Humby was diſmiffed with a rebuke.

No. 379, p.
144. *Eodem die et 6 Maij* 1680.—Ther ware mutuall libells by John Sleich, prowest of Haddington, and George Cockburne, bailzie ther, against one another, for verball injuries and calumnious expreßions. It was referred to freinds.

No. 380, p.
144. *Eodem, 6 Maij.*—The S. Councell revocks their former A& in Februar 1677, (see it in my other manuscript, *folio 278 in calce,*) anent the Admiralty distri&ts, and allows only Passes to be given by the Admirall and his clerk, and annulls all bygane Passes otherwayes iſhued furth ; which is hard, being done in the faith of that A&.

No. 382, p.
144. *3 Junij, post meridiem.*—At Privy Councell, Bargeny liberat, he finding caution to appear when called, under the pain of 50,000 merks.

2^{do}, The names of the officers of the new 5500 men, modelled out of the militia, ware red, and the King's nomination of them approven ; and six houses in the west appointed for garrisons, viz. Craigie, Blarquhan, &c. ; and the King's letter declared, where he gifted forfaultors, he reserved always the houses standing on the forfault lands for his oun peculiār use. He likewayes gave Generall Dalzeell a commiffion of Justiciary, with the advice of nine others, to execute justice on such as ware in the late rebellion at Bothuel Bridge, and did not take the bond within the firſt of January laſt, which day was limited to them, and claffed the feve‐rall delinquents accordingly.

3rd, The toune of Innerkething is conveened to pay a fine, because of a Conventicle lately keeped within ther toune. Ther defence was, that the house in which it was held doth not belong to the toune, though locally within it, but holds feu, bears burden with the shire, and is not countable to the toune's jurisdiction, but appertains to my Lord Dumfermeling and Tuedale. The Secret Councell granted them diligence to prove this.

No. 385,
p. 145. *4 Junij* 1680.—A Councell was called extraordinarily upon the news of the ryot committed by ſome weemen at Queenferry, who refcued from ſome of the King's forces one of the ministers who preach at the Field Conventicles, called Mr. Donald Cargill, and one Henry Hall, a fewar in

Teviotdale, who was wounded and taken, but dyed of his wounds; only their papers ware feized on, and a new covenant, which was printed. The Councell sent Generall Dalzeel with a party, to make all the strict inquiry he could to apprehend Cargill the minister, and to take them prisoners who had defended them. See more of this in another 8vo. MS.

8 Junij 1680.—This day, a letter from the King to the Seffion was red, No. 386,
reannexing the nomination of the clerks of the Inner House to the Register ^{p. 145.}
Office again, in regard the former letter, in Jullie 1676, disjoyning it and
giving that power to the Lords, was obtained when ther was no Register.

Eodem die.—The Airs of Wrightshoufes (*de quibus supra, 6 Februarij* No. 388,
1680, p. 120) craving by bill that their witnessses might be examined, ^{p. 146.}
(they being old, and one of them dead since the advocation,) for proving
ther contingency of blood, seing the rest might likewayes dy before the
discussing of the advocation from the macers to the Lords: The Lords
refused the bill, because the massers would regard no testimonies of wit-
nessses but them that ware examined in ther oun presence. It was moved,
by one of the Lords, that the maissers and assessoris might convein the
assise, and in their presence might take the probation to ly *in retentis*, and
proceed no furder. This was also refused, because the advocation stand-
ing undiscussed superceded all procedor; and the roll of causes being far
advanced, it would come in within a few weeks, and the testificat of the
witnesse age and infirmity did not bear upon soull and conscience. This
was judged by some hard measur, to gratify the Erle of Murray.

24 Novembris 1680.—The advocation against John Thomson, the air No. 480,
of Wrightshoufes was this day discuft, and the service remitted back againe ^{p. 169.}
to the maissers, with this caution to the inquest, to see the probation be
clear as to the contingency of blood; and accordingly, [December 22d]
the inquest served him air, tho one of his witnessses dyed *medio tempore*.

10 Junij 1680.—At Privy Councell, by a letter from the King, the In- No. 392,
dulgence was discharged within 12 miles round about Edinburgh; with ^{p. 146.}
sundry other things, which see *alibi* in another manuscript.

Item, A Commission of Justiciary is appointed in every shire to put the Laws anent the going to the church, and all the other ecclesiastical acts of Parliament, in strict execution.

No. 394, *14 Junij, et multis diebus seq.* 1680.—At the Criminall Court, many p. 146. Fyffe gentlemen, not contained in the former list of the 23 and 25 of Februar last, (*supra* p. 126,) are now pershued for their absence from or deserting the King's host last summer. It was proponed for one Bonnar, and some others, that they ware intercommoned, the tyme of the proclamation calling furth the heritors to Bothuell Bridge; and so might not goe, not having a safe conduct; and they ware not subjects, who ware only called out, and they could send none, seing none might converse with them. Answered by the Advocat, It was *ex propria culpa* they ware intercommoned, and, *nemo debet ex suo dolo lucrari*; and they might have applyed to the Privy Councell to goe. Replyed, They are now indemnified for the said intercommoning, and it ought not to be now objected, or to be prejudiciale to them. The Lords would not sustain the defence as sufficient to affoilzie them *simpliciter*, (which was thought hard,) but only to alleviat; which course, also, they took as to Alexander Pitcairne of that ilk, his defence of being a merchand, and late magistrat in Edinburgh; and with Mr. Andrew Hedderwek of Pitcullo, who alledged he had fallen and hurt his leg a litle before, in respect it did not appear but he might have waited on the host for all that: therfor, they ware fyned, but not to the full extent. Calderwood of Pitleddy, and many others, ware also fined.

No. 396, *17 June* 1680.—At Privy Councell, the 5500 men's order, and their p. 147. rendevous appointed.

No. 404, *22 June* 1680.—At Privy Councell, the King's letter was red, making p. 149. the Earle of Queensberry Justice-General, in place of Tarbet; and referring the absents from the host to the Privie Councell, and taking the power theirof out of the hands of the Criminall Lords. This was done, partly because they thought they proceeded too slowly and cautiously according to law; but what mainly influenced the change was, that Mr.

Robert Martin, Criminal-Clerk, might not get all the benefit, but the Bishop of Edinburgh's brother, Mr. William Paterson, one of the Clerks of Privy Councell, might get a share of it.

Primo Julij 1680.—At Privy Councell, George Clapperton of Wily- No. 418,
cleuch is ordained to exhibit one Penman, a lasse of 14 years old, with P. 152.
whosse mother he conversed scandalously, and did not educat the girle ac-
cording to hir means. The Lords ordained the maid (tho shée compeired
and declared hir willingnesse to stay with Clapperton) to be placed for
3 moneths with one of the ministers of Edinburgh, that during that tyme,
shee being free, might elect curators and choice to live wher shee pleased.

2 Julij 1680.—Robert Baird, late dean of gild of Edinburgh, &c., are No. 422,
pershued by Mr. John Maitland, master of the game in Mid-Louthian, for P. 153, § 2.
eating wild foul, contrare to the late A&t of Privy Councell. Alledged,
Being burgeses of Edinburgh, they are not oblidged to answere before the
shireff, and the toun hes a privative jurisdiction : See the information on this.

6 Julij 1680.—This day, the King's Majestie was served air in speciall No. 424,
to the late Duke of Lennox, his cousin ; the 14 eldest Lords of the Sessiōn P. 153, § 1.
ware the members of the inquest ; and the Lord Chancelor was Chancelor
to the assise ; the 4 maisters ware judges : this was done to make a right
of conveyance of that estate (wherof ther was not much left) to his natu-
rall sone, Dom Carlo. (See Craig, Feud. pag. 110, wheir he tells King
James succeeded to the Duke of Lennox at that tyme.) Some called this
service ridiculous and unneceſſarie, and thought the *jus coronæ* supplead
all thir solemnities in the King's perfone.

Eodem die.—At Privy Councell, the Chancelor's patent, as Duke of No. 424,
Rothes, was red ; and by a letter from the King, he is appointed, as Chan- P. 154, § 2.
celor, to be first Prefident of the Councell, above him who hath that title.
By another letter, the Earle of Roxbrugh is admitted a Privy Councillor.

8 Julij 1680.—At Privy Councell, the Hyland distri&s, by a letter No. 426,
from the King, are suspended and laid afyde for a tyme, in respect it was P. 154.

thought the King's forces might keep them in peace, togither with the engagements of the heads of the Clans for all that lives under them, conforme to our old laws.

No. 428, 9 *Julij* 1680.—At Exchequer, upon a letter from the King, a pension p. 154, § 2. is past to Mr. John Paterson, Bisshop of Edinburgh, of £100 sterling *per annum*, during his lifetyme. *Item*, There is a letter from the King red, shewing his religious and pious inclinations, and how, to defraud the Bischops quots, men took the gift of defun&ts escheats ; theirfor, he appointed no such gifts to be past, till first the party took the declaration. 2^{do}, That the gift ware expressly burdened with the quote ; that, by such artifices, the Bischops might not be disappointed of their just dues.

No. 429, 13 *Julij* 1680.—At Privy Councell, John Dundas of Jerviston was p. 155. fyned in a year's valued rent, for deserting the King's host, because he had not fully proven his excuse, viz. That he had, with bad usage, taken a great fwelling in his legs.

No. 434, 15 & 16 *Julij* 1680.—One Niving, the master of a ship, was pannelled p. 156. [at Criminall Court] for using some rash expreßions against the Duke of York, viz. That he was on the Popish plot of taking away the King's life, and overturning our religion and government ; and that he was to consent to the bringing over the French King with ane army into Brittain ; and that he had come himselfe to Scotland, to make a Popish fa&tion ther. This was spoke in cups, and with some qualifications ; yet he was convened on the A&ts of Parliament against leefing-makers betuixt the King and his peopple ; though it was objected theſſe A&ts did not meet this caſe, he neither having lyed to the King or his peopple, nor to the peopple of the King ; and at the moft, it was but *scandalum magnatum* ; and in England ſuch a proces would be laughed at. Yet his defences ware all repelled, and the dittay found relevant, and the libell fustained and admitted to probation, and he put to ane affize, whereof 7 clenged him, and 7 found him guilty ; and the ballance thus ſtanding equall, Provost Binny, Chancelor of the Affize, found him guilty ; albeit the dittay was nather

relevant in it selfe to infer the pain of death, nor was it proven against him ; but this was done to fright England, and to gratify his Royal Highnesse. But the moderation of *Lex unic. Cod. si quis Imperatori male-dixerit* is more commendable, and such a practise should not be standing on record. It is true, he deserved a severe punishment, but law cannot streach it to death. The pronouncing of sentence was delayed till the 4th of August ; on which day, they ordained him to be hanged on the 18th of August therafter. But the Judges knew the King, by the Duke of York's mediation, was sending a remission, at leist a letter converting the sentence to banishment, and confiscating his ship and all his goods, but preferring his creditors theirin to his fisk. See my Historick folio manuscript, on James Skeen's death, in December 1680, p. 5.

20 Julij 1680.—At Privy Councell, Arthur Forbes is perhued by the No. 438, Master of Salton, and one Mistris Gordon, for violent taking possession of p. 157. a house wheirof shee was wodsetter, without having a decreet of removing or eje&tion ; wheirupon probation having been led, the Councell found Arthur in the wrong, and imprisoned him.

Item, Ther ware mutuall complaints given in to the Councell by the two Provests of Perth, Hay and Thriepland, for beating one another in the hy streets ther. Threipland's brother was rejected from being a witnesse, and some who had told before-hand what they had to depone ware received *cum nota*.

26 Julij 1680.—The King's customes are fermed, as also the Stewartry No. 443, of Orkney ; of both which see in another manuscript. p. 159.

28 Julij 1680.—One of the prisoners brought in from Moorkirk with No. 446, Rathillot, wher Cameron the feild-preacher was killed, was this day, at p. 160. Privy Councell, tortured in the boots, he having been a chapman, and carried their letters. The Bischops at this, as a sanguinary case, retired furth of the Councell.

Eodem die.—2^{do}, Ther was likewayes ane A&t of Sederunt made anent No. 447, notars, and a motion, that the Clerks of Seffion should all be admitted p. 160, § 2.

nottars ; which was thought a disparagement, seing they *in actibus officij* are more trusted and credited than notars are, and in extrajudicall matters they will not negotiate as nottars : This was moved to bring in some money to Laurence Oliphant, now clerk to the notars, and to the Register his constituent.

3^{to}, At Exchequer, Alexander Anderson, bailzie in Edinburgh, was preferred to Andrew Bruce, merchand, in the escheat of one Biccarton, who was neirest of kin to Andrew's first wife, and so laid clame to a 3^d of the conquest during hir tyme, conforme to his contract-matrimoniall.

No. 448, 29 July 1680.—At Privy Councell, Fletcher of Salton, Sinclair of p. 160. Stevinson, and Murray of Blackbarronie, are pannelled for seditiously and factiosly opposyng, at leist obstrucing, his Majestie's service, in putting the A&t of Privy Councell to execution for levying the 5500 men out of the militia. They shew the difficulties and scruples they meit with in rendring it practicall ; (which see in the Informations.) The Councell did not fine nor imprison, as some expe&ted, but only rebuked them ; and upon the Councell's a&t, ther ware charges of horning directed against all the heritors they suspe&ted, charging them to meet and stent themselves according to their severall proportions of thesse 5500 men. Some thought, in a matter of this concerne, the Commissioners of the Militia ought not to take upon them to lay a tax upon the rest of the gentry, but they ought all to meet ; for *quod omnes tangit ab omnibus debet approbari, et volenti seu consentienti non fit injuria*. But since the State finds the Commissioners so ill to manage, the wholle heritors would be more unbridled ; and thir charges of horning ware a new style. (*Vide infra*, page 163.)

No. 449, 30 Julij 1680.—D. Hackston of Rathillet was condemned, and that p. 160. same day execute in a most severe manner ; which see, with many remarks, in an octavo manuscript, p. 191, *et multis sequentibus*, till 210.

§ 2. *Eodem die.*—At Exchequer, Lylle, reli&t of Home of Bellita, and James Home now hir husband, put in for a gift of tutorie-dative to hir children of the first marriage, in name of Mr. Harry Hay. Alexander Home of Sclaithouse being served tutor of law to them, compeirs for his

interest, and produces his gift. Alledged, It is null, he not being the nearest, and they had a reduction of it raised ; for he was not *proximior agnatus*, in so far as he was only related to them by his mother, who was their aunt by their father, which is cognation and not the agnatick line. 1. *Institutio de legittime Agnatorum tutela*, which says expressly, *Amitæ tuæ filius non est tibi agnatus, sed tantum cognatus.* The Lords of Exchequer rejected the tutorie-dative as long as the service of a tutor in law stood unreduced and untaken away ; for, as tutor *testamentarius præfertur legittimo, so tutor legittimus semper excludit dativum.*

31 Julij 1680.—The Lords of Seffion gave their consent to the new No. 453, gift of imposition, granted by his Majesty to the Toune of Edinburgh for^{p. 161.} 22 years, of 2 pennies Scots upon every pint of ale sold within the Toune ; and the Advocats (wheirof few ware present, being the last day of the Seffion) being called in, and this intimat to them, and they not protesting against it nor opposing it, their silence was repute for a sufficient consent. The reason the Toune required the assent of the Colledge of Justice, was in respect they had the Toune, by contract in 1669, obliged never to seek a renovation or continuation of that gift on the ale.—The new gift the Toune has got from the King, is of 2 mks on each boll of malt, and not of 2 pennies on the pint of ale, as the former ware.

Eodem die.—Mr. W^m Murray, advocat, having offered to discover, ad No. 454, *levamen et exonerationem conscientię*, that he knew his brother, the tutor^{p. 161.} of Stormont, had bribed and suborned witnessses in Annandale and Sir Robert Creighton alias Murray's affair ; the Lords, in regard he was not able to come abroad throw indisposition of his feet, ordained 3 or 4 of their oune number to goe to his chamber and examine him *ex officio* therupon ; but therafter John Murray the tutor having assured the Lords that he was hypochondriack and melancholy, they appointed him first to be visited as to the condition of his health and temper of his body, and he was found to be furious and deeply melancholy.

Nota.—See in another manuscript [A 2] in 4to, many observes and de-^{No. 455, p.} cisions which I collected in thir moneths of June and July 1680 ; but not^{162.}

knowing their precise tyme, or else they being older decisions, I placed them in the beginning of that manuscript to page 23d theirof.

No. 456, p.
162. 4 *Augusti, seu sextilis*, 1680.—[At the Criminall Court,] Tuo of the prisoners taken by Earleshall, at Airdsmosse, with Rathillet, wher Camron was killed, are this day tryed, and sentenced to be hanged as traitors at the Grasse Mercat in Edinburgh, without any other rigor, they being but mean persones ; the one was a Galloway man, called Malcolme, the other borne in Evandale, called Alison, or Allanson. The sentence was execute on them upon the 13 of August therafter.

No. 457, p.
162. 5 *Augusti* 1680.—Duke Hamilton exhibited a complaint, at Privy Councell, against one Fergusson for oppression ; for he being employed to serve [seize] thosse who ware living within the Duke's regality, and had been at Bothuel Bridge, and had not taken the Bond, he seized on sundry who ware most innocent ; likeas, he refused to shew the Duke his commiffion, though he offered to concur with him, but gave him irreverent language. The defence was, He offered to prove he apprehended none but such as ware guilty. This being admitted to probation, it's said he hath not proven it.

No. 458,
p. 162. 10 *Augusti* 1680.—Alexander Home of Sclaithouse gave in a libell to the Privy Councell against Lylle, relift of Home of Bellita, and James Home now hir husband, craving hir children with Bellita might be delivered up to him as ther tutor in law, who ought only to have the custody of them. The Lords ordained the children to be delivered up to him as tutor ; albeit they ware yet but young, and the mother offered to intertain them gratis, and that it was desired they might be permitted to stay with their mother, during the dependence of the redu&ion they have raised of his tutory, as only being neireft cognat and not *agnatus per virilem sexum junctus*, as the A&t of Parliament in 1474 requires, all which was heer repelled, for the Bischops thought it unfit to concredite the care and education of children to ther mother and stepfather, shee frequenting conventicles, and he refusing tq take the Declaration ; otherwayes, the

children being within seven years old, and the offer to seek nothing for their entertainment, use sometymes to move the Lords of Seffion.

19 *Augusti* 1680.—Robert Mein, keeper of the letter-post office, is No. 459, p. 162. imprisoned by a Committee of the Privy Councell, for publishing the News Letter before it was revised by a Councillor or their Clerk, (tho he affirmed he had shewed it to the Earle of Lithgow before he divulged it.) What offended them was, that it boor that the Duke of Lauderdale's goods ware shipping for France, whither his Grace was to follow shortly; which was a mistake. He was liberat, after a day or two, with a rebuke.

1 *Septembris* 1680.—Mr. John Dickson, one of the preachers at field No. 460, p. 162. Conventicles, was apprehended and put in prison, and the Councell inclined to send him to the Basse.

5, 6, and 7 *Octobris* 1680.—At Privy Councell, ther being a letter No. 461, p. 163. from the King to perfitt that modell out of the Militia of 5500 men, if it was agreeable to law; and the President of the Seffion being put to it, tho he had voted for it before, yet, seing the bone put in his foot, he waved it, and told, the Lords of Seffion was the King's councell at law, and the wholle Judges ware not in toune, and would not be till November: and so he got it laid asfyde till then. I suppose, the Seffion should vote it legall, it being a point of government and policy, that nether will make it law, nor binding; and it will be dangerous to bring up this practise of referring to the Seffion, and not to a Parliament; for this, in proces of tyme, may bring them to be adhibit in verifeing all the King's A&ts and Edicts, (as the Parliament of Paris uses to do;) and being of the King's nomination, and removeable by him, they will not dare refuse to ratifie and interinate them.

2^{do}. By his Majestie's warrant, ther was a proclamation, yet extending the gracious favor of his indemnity to all that had been at Bothuel Bridge in armes, and would yet come in and take the Bond never again to rise in armes, betuixt and the 1st of March nixt. But it excludes ministers, heritors, prisoners, and ringleaders, i. e. officers, *fautores*, and upstirrers.

3^{to}. Mr. John Waufe, keeper of the tolbuith, got a severe reproof from the Councell, for suffering one of the weemen to escape the prifon, who had affisted Mr. Donald Cargil's escape at the Queenfferrie, in June laft ; with certification, he ſhould not only be deprived if he fell in the like, but also he and his cautioners moft rigorously perſhuied.

4^{to}. The oued ministers and other masters, teaching grammar within Edinburgh, ware ſilenced and diſcharged from keeping Latin ſchoolls, conforme to prior acts againſt them, in favors of the High Grammarſchool ; and that they are diſaffeſted perſones, and refue the Supremacy and Declaration. See the [4th] A&t of Parliament in 1662, *in fine*.

5^{to}. Robert Curry, wryter, being bound as cautioner to preſent a man, impiſoned upon ſuſpition as one of the rebells, but bailed by him, at this Councell-day ; and the man being very ſick, and like to dy, Robert, to exoner himſelfe, did cauſe bring him from his oune houſe, carried by five or ſix people on a bed, and brought him to the Privy Councell doors, and took iſtruments on his preſentation to free himſelfe. The Chan-cellor and Councell took this rude and cruell uſage of the poor ſick man ſo ill, that they commanded Curry to prifon, ſeing he might, by a bill, have repreſented it, and gotten himſelfe liberat.

6^{to}. Seton of Carrifton's 2 daughters raiſed a libell for aliment againſt their father and his creditors. The Lords conſidering they ware come to age, and that their father offered to intertwine them in his oune family, (tho they affirmed he had uſed them moft barbarouſly,) the Councell referred them to the Judge Ordinar, and recommended to them to goe home and ſtay in their father's houſe.

7^o. One Campbell, acceſſory to the murder of one of the King's dragouns, and he who affixed the proclamation at Sanquhar, in June laft, depriving the King, was examined ſeverall tymes before the Councell, and abydes at the lawfulness of all he had done.

8. Sundrie Lithgow-shire heritors ware conveeneed for abſence from the King's hoſt.

9. Fergusſon, whom Duke Hamilton complained of, (*ſupra* 5^t of Au-gust, p. 162,) was found, after probation, in the wrong, and ſo was im-prifoned.

2 Novembris 1680.—At Privy Councell, the Duke of Albany and York No. 462, p.
^{164.} being present, there is a letter to the King,¹ subscryved by all the Privy
 Councilors present, rendering the King most humble thanks for the
 favor of sending his Royal brother amongs them, and beseeching to
 know the measures by which they are to serve his Highnesse; and that
 they will ounē and assert the lineall succession of the Croun to the utmoft.
 This is a boast to hector the House of Commons and generality of the
 English nation, who would have the Duke of York declared incapable, as
 a Papift.

This fame day, the Lords of Seffion, and some Advocats, in ther gounes,
 went doun to the Abbey of Halirudhouse, and payed their compliment to
 the Duke, and got a kiffe of his hands, on ther knees.

At Privy Councell this day, the Earle of Murraye's signator for being
 Secretary to his Majesty, (*de quo vide plura alibi*, page 213, in an 8^{vo} manu-
 script,) in place of the Duke of Lauderdale, was red, and was approven
 and accepted.

11 Novembris 1680.—At Privy Councell, Sir John Scot of Ancrum is No. 468, p.
 proceſſt, for ſpeaking reviling and opprobrious words of the King and his
^{165.} Privy Councell.—Objected againſt Major Murray, one of the witneſſes,—
 He could not be receaved, both becauſe he was the Advocat's informer,
 and, 2^{do}, he confeſſed he was not in the roume with him; and ſo being
 only in the nixt roume, and overhearing, might eaſily miſtake words.
 The Lords admitted him, becauſe the Advocat declared he was not his
 informer. But the King's Advocat knew weell eneugh, the Major (to
 evite this) had informed him who went and gave the Advocat information
 of it; ſo he was *cauſa cauſæ*, and the mediat informer.

2^{do}, The Laird of Brody, and ſome other gentlemen of Murrayſhire,
 are conveened before the Privy Councell, for abſence from the King's
 hof at Bothuel Bridge, tho the Rebells were diſſipat before they could
 come the lenth; only they had not attended the rendevous. Brodie was
 affoilzied, that his father was alive, and he had no right to the lands; yet

¹ See this letter to the King in print.

it was knownen, he alone was in possession, and acted as heritor, and gave discharges to the tennents ; but he swore for it. They thought to have griped them, because they would not take the Declaration against the Covenant ; likeas, in their shire meetings, they opposed the Earle of Murray.

3^{do}, Ther was the precognition of the affair of the two Earles of Caithnes : it was referred to a Committee. They complained of Glenurquhie, or Earle John, that he had abused to cruelty and oppression the power the Privy Councell had given him of fire and sword. He complained again of George, that, among many other barbarities, he had wilfully brunt doun the Earle's principal mansion-house.

No. 475, p.
168.

18 *Novembris* 1680.—At Privy Councell, Greinhead, Chatto, and some other Tivedale lairds, being pershued for absence from Bothuel Bridge raid, they proponed a defence on the General the Duke of Monmouth's passe and exemption to stay from the host. The Privy Councell found, it was not within the commission and power of any Generall of ane army to dispence with men's coming to the King's host ; they not being his souldiers, nor under his dispose, till they appeared once at their cullors and standart ; and if he might licence the absence of one, why not of mo, and so of all ? but after they are in the army, he might, upon rational excuse of sicknesse, &c., grant forloffs, &c. Yet, in regard the Duke of Monmouth was a stranger, they excused thesse Gentlemen for this tyme, but declared they would not sustain it hearafter. Ther was ground to suspe& their licences were only obtained *ex post facto*.

2^{do}, Balfarg and the Lady Bogie pershue a ryot against William Strauchan, a creditor of Weymes of Bogies, for offering to poind after a suspension and protection intimat, and that ther was a chamberlane nominat by the Lords to manage Bogie's estate for the creditors behooff.

3^o, Sir William Wallace of Craigie pershues the new toun of Air for offering to choice ther oun magistrats, wheiras he alledged it was but a brugh of barony, and he had the sole power of ele&ting ther magistrats. They answered, they held of the Prince of Scotland, and that the late

Craigie, by his power without any right, sought to oppresse and intrall them. The Councell, after probation, found Craigie had right for what he clamed, and decerned.

4^{to}, Ther war mutuall libells and complaints betuixt Murray of Philip-hauch, Shireff of Forres-shire, and Urquhart of Meldrum, who commanded one of the King's troupes. The Shireff complained [that] Meldrum usurped jurisdiction in his Shirefdome, and excluded him from fitting with him, without any power from the Privy Councell; and threatned to imprison him. Meldrum alledged, the Shireff and the gentry refused to give up a list of those in ther bounds who had been in the late Rebellion. Both ther libells ware admitted to probation. Tho Meldrum's power from the Councell to fit as a Justice of Peace, and not to a^t alone, was expired, yet the Chancelor got him of by ane agreement.—This insolence may give us a taft what military governement would be: *vide infra*, page 174.

20 Novembris 1680.—By a command from the Lords of Seffion to Mr No. 476, p.
George Bannerman, shirefdepute of Perthshire, he is ordained to send over
^{168.} tuo nottars from his bounds, to be set on the trone of Edinburgh, with a paper on ther brows, because the Lords have found, that they being called to subscryve a testament for ane old woman, they took hir hand after shee was insensible and speechleffe, and caused her touch the pen, and then subscryved for hir as having her mandat, tho they had none, and shee understood not what they ware doing: for which the Lords declared them infamous, and to be punished in manner forsaid.

[Primo Decembris 1680.]—The ouners of the Elephant which was No. 490, p.
brought hither from England to be showen, having charged Alex^r Daes,
^{171.} merchant, and the other fermers of it, on ther contra^t to pay the 400 fb sterling for the use of it severall moneths, they presented a bill of suspenzion on sundry breaches and contraventions of the said contra^t; such as, they did not shew it at the precise howers appointed, and took advantage by shewing it privately, for which they have not compted, and did not shew all it might doe, viz. its drinking, &c.; but it could not drink every tyme it was showen.

No. 495, p. 4 *Decembris* 1680.—A Privy Councill is called extraordinary, who
 172. issued out letters for charging Patrick Carnagie, brother to the present
 Earle of Northesk, Kinfauns, and Fineven his brother, Haliburton of
 Pitcur, and other ther accomplices, for to compear and anfwer for the
 plagiun and rapt committed by them in the night on Mary Gray, Balle-
 gerno's 2^d daughter, a girle not yet 12 years old, law being very severe
 in the punishment *raptoris immaturæ virginis*. L. 38. § 3. *D. de pænis, ibi-*
que notæ Van Leuwen & Gothofredi. They having compeared, and
 alledged, they ware lawfully married, it was answere, It could not be a
 valid marriage, because shee was but xj years and a moneth old ; and no
 religion nor church communion, nather Roman, Lutheran, nor Calvinist,
 permitted marriages of weemen before 12 years fully compleet. Yet it
 was urged, that in procacious and præcocious maids *de jure canonico*
malitia supplet etatem, and that shee was of a great grouch. Patrick
 Carnagie's mistake and apprehension was, that the most his rapt could
 be called was only a clandestine marriage, which the [34th] A&t of
 Parliament in 1661 fynes with 1000 mks for one of his quality ; but they
 never confidered it was no marriage, being *virginis impuberis et immaturæ*.
 Patrick being fugitive, a proclamation was emitted against him in print,
 and some spoke harsh things, that if he could be got he deserved hanging,
 for ane example to secure men's children from such attempts. (*De tempore*
contrahendi nuptias, see *alibi*, in an 8^{vo} manuscript marked R. page 5,
 wher ther are some curious obserues from Aulus Gellius, &c. *De puella*
nibili at 9 years. See Chamberlayne's present state of England, part 1.
 page 486. See in other manuscripts the airesse of Craigleith's case, item
 anent Strathuird's daughter.)—*Vide supra*, page 68, Captain Tyrie, hir
 mother's husband craving the cuftody of this same girle at Privy Coun-
 cill from the tutor. Now, on this negligence, the Lords took hir from
 the tutor, and ordained hir to stay with hir mother, who made hir ap-
 pear with much confidence, and demand justice against hir ravisher.
 See more *infra*, page 178 & 180.

No. 496, p. 6 *Decembris* 1680.—At Crimall Court, Sir James Stanfeild pershues
 173. the Earle of Queansberry, Justice-Generall, for cutting some timber at

the lead-mines in a ryotous manner. The defence was, he acted by the Shireff-depute's warrant. Replied—the Earle of Nithsdale's Shireff-depute ther being a knownen Papist, he could not, by the 9^t A&t of Parliament in 1567, and A&t 45 in 1572 *in fine*, be a judge; yet the Criminal Lords sustained the defence; but this being *mali exempli*, they persuaded Sir James, on ane agreement, to passe from his pershuit.

9 Decembris 1680.—At Privy Councell, in the affair above mentioned, No. 449. p. page 168, betuixt Philiphaugh and the Laird of Meldrum, the four gentle-^{174.} men in Forres-shire, viz. Wells, &c. who were imprisoned on Meldrum's complaint, are set at liberty; but the Advocat is ordained to proces them on the 2^d A&t of Parl. in 1670, for refusing to depone anent ther knowledge of Conventicles, or resetting Intercommoned persons since the King's pardon and indemnity in June 1679.

2^{do}, The two Earles of Caithnes, ther mutuall complaints being found criminal, are remitted by the Privy Councell to the Justice Court.

3^{do}, David Suinton, late bailzie in Edinburgh pershues one Lyell, servitor to the Vicount of Oxenfurd, for defaming him, and posting him up upon severall of the publick places of the city by programs as a coward. His libel was admitted to his probation. *Vide infra*, p. 178.

24 Decembris 1680.—At Privy Councell, Cromvel Lockhart of Lee No. 515, p. pershued one La Prune, a Frenchman servitor to the Earle of Forfar,^{177.} for a ryot committed against him and his wife.

2^{do}, Maitland of Pitreichy pershues Mr. William Moir, advocat, for a ryot in keeping a Shiref-court in Aberdean, after he, as sole Shiref-depute from the King during his lifetyme, had discharged it. Mr. William's defence was, he had a deputation from the Earle of Errol, who was Shiref principall. The Lords discharged Mr. William Moir from exercising the office of Shiref-deputy their till he prævailed in a declarator of his right before the judge ordinar, the Lords of Session, to whom they remitted him.

INCIPIT ANNUS 1681 FŒLICITER.

No. 517, p.
178. 4 Januarij 1681.—At Privy Councell, Lylle, for defaming bailzie David Suinton, is ordained on his knees first to crave the Councell pardon, and then the Bailzie, and was sent to the Tolbuith during pleasure.

2^{do}, Kinfauns, Fineven, and Pitcur, for being accessory to the violent away taking of Mary Gray, (*de quo vide supra*, page 172,) ware put to ther knees, and sent to the Castle of Edinburgh, and ordained, under all hyest pains, to produce him who wounded the servant while he was resifting ther rapt: they came weell of, that ther acknowledgement of the fault was accepted instead of a fine.

3^{do}, Articles of treason being exhibited at Criminal Court against Campbell Earle of Caitnesse, for fyre-raising, murder, treasonable garrisoning of houses, convocation of the liedges, and a&ting both before and beyond his commission and warrand from the Privy Councell. He gave in a petition to the Secret Councell, craving that the Advocat may be ordained to condescend on his informer of thesse articles of treason, to the effect the Earle might get the informer to subscribe in *pœnam talionis*, by A& of Parl. in 1587, if he succumb, because the Advocat, as *calumniator publicus*, is not liable himselfe. The Advocat answered, he was not oblidged, else this should discourage all informers if they ware divulged and so exposed. Some thought, *pessimum illud genus delatorum* ought not to be emboldened by concealing ther names, and exeeming them from the hazard of retaliation. It deserves to be considered what kind of garrisoning of houses is unlawfull or treasonable; for, if I hear that the Hylanders are coming doun to rob my house, if I take in 20 or 30 men into it, (not against the publi&t, but them,) *Quæritur*, If it can be construed a garrison, unlesse I had them listed under a captain, and under pay, and under cullors, and formally sworne theirto? which certainly ware unlawfull without the King's consent. (See the folio manuscript A. folio 230, [*supra*, page 85.] in Affint's case in December 1673.)

13 *Januarij* 1681.—At Privy Councell, Kinfauns fyned for the rapt No. 527, p.
above mentioned, page 172. Item, the proclamation anent the burning^{180.}
of Preiftfeild, the passages wheirof see in my folio Historique Manuscript,
marked G. page xj. and *sequente*.

17 & 18 *Januarij* 1681.—At the Criminall Court, one Sibilla Bell and No. 530, p.
hir mother are sentenced to be hanged for murdering and strangling a^{180.}
child borne by the said Sibilla in adultery. Item, 3 other weemen are
condemned for the same crime committed by them on ther bastards;
which sentences ware accordingly put to execution the 26 of Januar
theirafter on them. As also, 2 other weemen ware then hanged for ther
opinions and principles disouning the King and the Governement, and
adhæring to Camron's treasonable Declaration. They called the one of
them Isobell Alifon, from Perth, and the other Harvey, brought from
Borrowstounness. See my Historick folio manuscript, marked G. page 13.

20 *Januarij* 1681.—At Privy Councell, a petition was given in and No. 532, p.
subscrived by the Lord Yester, by Salton, and ten other gentlemen of^{180.}
Eist Lothian, complaining of the stading forces, ther quartering upon
them, by ther officers order giving them localities. This bill was ex-
treemly resented, because it called Quartering contrare to law; and
seemed to derogate from the King's prerogative, and reflected on the
Governement.

21 *Januarij* 1681.—The Proclamation against the Students of the No. 533, p.
Colledge of Edinburgh was emitted. (*vide* the preceding page, anent^{181.}
burning of Preiftfeild.)

23 and 25 *Januarij* 1681.—Alexander Hamilton, merchand in Edin- No. 537, p.
burgh, was imprisoned; and Trotter of Mortonhall was sent for to be^{181.}
apprehended. The first, by the delation of Riddell of Hayning, for
saying he beleived ther would not be so much resentment taken if the
picture of our Savior had been burnt, as was for bairnes their burning
the Pope in effigie. The seconnd on Hay of Bara's delation, (a most

ungentleman employ fure ; for *odi memorem compotatorem*,) for telling he heard, that night Preistfeild was brunt, ther ware some of the Duke of York's servants seen walking near the garden, which was to turne over the firing it on the Papists. When they ware examined, they mollified their words ; and after some dayes imprisonment, Mr. Hamilton, on a bill mentioning his loyall principles and detestation of all faction, and sorrow if any words escaped him, was liberat on caution. Mortonhall was never incarcerated.

No. 540,
p. 182.

28 Januarij 1681.—Craig of Riccarton having dyed in the fornoon, and having waird lands, and his air a minor, the waird and marriage was gifted by the Exchequer, that same afternoon, in favors of Jo. Cunyhame of Entirkin, ther was so much præcipitation used by Halton, who appeared for it. Sir William Purves took the confidence to syde in with the Dutcheffe of Lauderdale and E[arle] of Murray, secretary, and get another gift of it past his Majesty's hands ; alledging, the 1°. was null, being above the summe and value to which the Exchequer by their commission and practise are stinted.

No. 543,
p. 182.

Primo Februarij 1681.—At Privy Councell, the A& is past, restoring and opening the Colledge of Edinburgh again, upon conditions that the parents find caution for their children under the penalties theirin mentioned ; and that thesse students above the Semi-classe shall take the oaths of allegiance and supremacy, and give oblidgements under their hands that they shall goe regularly to their parish churches.—Ther was few or none who gave thir conditions.

No. 572,
p. 188.

Eodem, 25 Februarij 1681.—The Lady Traquaire *contra* the Earle of Southesk, being omitted to be insert heir, see it marked in a 4^{to} law manuscript marked A, 2, p. 102. *Vide infra*, thir parties, page 238, *in calce*.

No. 577,
p. 190.

After Feb. 26, see, in a 4^{to} law manuscript, marked A. 2, many law observations and decisions which I gathered and wrot into that book, during this laft Winter Seffion of November and December 1680, and

Januar and Februar 1681, and during the Spring Vacation therafter, because I knew not their præcise dates ; therfor I did not insert them into this manuscript ; they begin at page 47 of that paper book, and continue to the end theirof.

2 Martij 1681.—Robert Milne of Barneton, tacksman of the King's No. 578,
p. 190.
customes, pershues several merchands of Edinburgh at Exchequer, for
embezilling and stealing ther goods uncustomed. Alledged, 1^o, his libell
was generall, not condescending on the tyme, place, ship, and the par-
ticular specie of goods, but onlie kinds and quantities libelled at randome,
on which they could not be holden to depone. 2^{do}, When Sir John
Nicolson was tacksman, and urged to have the merchands to give ther
oaths, the Lords of Exchequer ware tender and refused it ; and by the
laws and customes of other nations, no such oaths are taken, seing they
have ther waiters, and *de facto* doe search and confiscat all when found,
which remedies are sufficient to secure the King's interest, *ne quid
detrimenti habeat ex fraudato vectigali* ; only our 12th A& of Parliament
in 1669 expreſſly allows the proving of it by oath for deeds 3 moneths
back from the citation. 3rd, Tho the custome be liquideate by the book
of rates, yet he in a moſt arbitrary manner exacts more. 4th, Tho by
the policy of all well-governed commonwealths, collectors and fermor-
ers of customes ſhould, nather by themſelues nor by palliat interpoſed
perſones, carry on a trade, yet the ſaid Robert, to the underſelling and
discouraging of all merchands, dryves a trade himſelfe, &c. Continued
till June. *Vide infra*, page 191.

Eodem die.—The A& for prohibiting the importation of ſeverall mer- No. 579, p.
chandizes this day paſt ; but it was perfyted by the large A& regulating 191.
trade, dated the 11 of April therafter. Upon this the tacksmen of the
King's customes gave over ther tack, tho it was proven by ther books the
prohibited commodities did not amount to 1500 lb. *per annum* ; many of
them ſtollen by without paying custome, ſuch as laces, ribbons, &c. The
customes ware turned unto a colle&ion, wher Halton got Robert Milne
for his man, the Chancelor, Captain James Crawfurd, and the D[uke] of
York recommended Sir James Dick, because of the loſſe of his house.

No. 580, p.
191.

Eodem tempore.—At Criminal Court, Hamilton of Kinkell, who was taken in Fyffe when he was going to joyne with thosse who rose at Bothuel Bridge in June 1679, is set at liberty upon caution ; and 3 fellows called Gogar, Miller, and Sangster, are sentenced to be hanged on the 11th of March, for thir treasonable principles against the King, in adhaering to Cargil's Declaration and Covenant. Ther was a 4^t, called Murray, sentenced likewayes to die with them ; but on the 10 of March, he was prevailed on by the Lord Register, Sir Thomas Murray, to petition the Councell, which the rest would not doe ; and so he was reprieved for 8 dayes first, and then on the 18 of March for a longer tyme. See this in my Historicall manuscript marked G, page 15.

11 Martij 1681.—Gogar, Sangster, and Miller, are hanged at the Graffle Mercat of Edinburgh. *Vide supra, paginam præcedentem.*

No. 581, p.
191.

4 Martij 1681.—Robert Milne, tacksman, &c. against Sir Patrick Home of Polwart, for customes, &c. Alledged, he exported and imported nothing but for his ounе use, and whatsoever is so done by noblemen or gentlemen is exeeemed from paying of custome by ane expresse law, A& 152, Parl. 1592 ; Act 251, Parl. 15, Ja. 6. in 1597, *in calce*, and the other lawes and authors their cited. Answered, 1°,—This A& does not liberat from excise, which is a tax and burden invented and imposed fince thesse A&s, and the exemption is not repeited in the A&s anent excise. 2^{do}, The Parliament's grant of the customes to the King in 1661 has innovat this, and there is no reservation in favors of gentlemen. 3^{to}, No other import is exeimed from Customes but what is the product and immediat returne of our ounе exported commodities, which this was not. Replyed—It's eneugh that it's not reschinded nor tane away. This touches the gentry in ther copieholds and ther ancient priviledge. It was continued.

No. 582, p.
191.

5 Martij [1681.]—At Privy Councell, the Marks are cryed up to 14 pence. Craig lyses, (page 110 and 115, *Feudorum*,) by hightening money, the price of all things estimat and bought by money, rises proportionally, so that it is a great inconvenience to the publick. See Bodinus

French treatise upon Malefroit's *Paradoxes*, anent the crying up or dounie of money. See A&s 18, 19, 21, and 23, Parl. 3^d and 4^t James 3^d, in 1467.

Eodem die.—The Privy Councill heard the debate betuixt the toune No. 583, p. and shire of Aberdein anent ther malt merkat. The gentlemen of the ^{191.} shire and ther tennents alledged they ware in possession thesse many years of bringing and selling ther malt within the toune of Aberdeen without the leist interruption. The toune contended they suffered no other malt to be sold in the mercat save what was grinded at ther oun milnes. The shire would not yeeld to this, being upon the matter a waft servitude of thirleage. The Councill named a Committie for considering this, and to prepare a report against the nixt day. I hear the shire had clearly proven ther 40 years possession of the priviledge of the use of the mercat with the burden of the belman's exacting as much malt as his bell would hold out of every sack, which at last was converted to a groat of money for every boll.

8 Martij.—This being advised by the Councill, they decided in favors of the shire, and ordained the toune to pay the shire's commissioners 1000 merks for ther expences.

8 Martii [1681.]—The Privy Councill refused a warrand or licence to No. 584, p. George Seton of Barnes to import horses or cows from Ireland, whither ^{192.} he was going; tho in his bill he offered caution and bond to sell none of them, and thereby wrong the native product; but he was only to use them for his own labouring, and stocking the ground; and they would not dispense with ther oun A& of Councill.

10 Martij 1681.—Nisbet of Craigintinny pershueing his mother at P. No. 585, Councill for ane aliment, as the air, of hir exorbitant joynture of 3600 ^{p. 192.} m̄s. free per annum, upon the 25 Act of Parl. James 4^t, 1491, he, tho air, not having a competency *aliunde* wheiron to live, and being left with great debt, so that the burdens ware not of his contracting, or by his luxury, and shee had married again, and did not apply any part of hir excessive joynture and lifrent to the children of the first marriage, his

brether and sisters, by whosse father shee had it, and what the Council had tane away from the Countes of Murray was instanced. Tho the committee (to whom it was referred) ware very favorable in ther report, and gave ther opinion shee should be restricted to the halfe, yet the P. Councell refused to take any thing from hir, and resolved for the future to medle sparingly in such matters, seing no man could be secure, when by solemne stipulations and agreements, such as matrimoniall contracts are, he had provided his daughter to a joynure, and given a great tocher in contemplation theirof, if such arbitrary encroachements ware allowed, and fand the favor shewed to the E[arle] of Murray ane extraordinary case, and not to be drawen in exemple. However, they referred him to the judge ordinar, and he hath raised a summons before the Lords of Session, wheir it will be difficult to reach hir in law. *Vide infra* of this, page 144; *item*, p. 322, Bruce.

No. 586, p.
192.

Eodem die.—One Major Lyell complaining to the Councell that his horse was arreisted for debt by a burgesse, tho he was an officer of the militia, the King's Advocat freely alledged they had no priviledge, else all the 22,000 men (wheirof our militia confiscted) might plead the same exemption, and so the execution of law should be blunted, and they become our masters instead of being our servants. The D]uke] of Albany resented this, and said tho the common sojors may not clame this priviledge, yet the officers nominat by the King ware certainly fred from all summar arreistments, ather of ther persons or horses and armes, in all the places wheir ever he had been in, else upon reall or forged grounds the King's service might be retarded or disappointed by his ennemis; but the custome was for creditors to apply to the General or Admiral, and he was to call the debtor before him, and give him 3 moneths to pay it in, and if he did not pay it within that space, then he was to turne him of, and leive him to the course of law.

No. 587,
p. 192.

15 Martij 1681.—Strowan Robertfone is imprisoned by the Counsell for justling with the Marquis of Athol, and giving him and his servants injurious and opprobrious words. *Vide supra* thir parties, page 189.

17 & 18 *Martij* 1681.—At Criminal Court, the Heritors of Cliddisdale No. 588, p.
192.
who ware in the rebellion of Bothuelbridge in 1679, being upon the pan-
nell, it was alledged for Gawin Hamilton of Hill, sone to Raploch,
absent, that he could not be declared fugitive, (what needs they both be
declared fugitive, and a sentence of forfaultor likewayes be pronounced
against them, might not the last serve for both,) because, having been in
prison, the Privy Councell had set him at liberty, to appear at a day not
yet come. The Justiciars fand, notwithstanding of that bond, he ought to
have appeared before them in this Court. 2^{do}, Alledged, he was illegally
summoned at his dwelling-house of Hill, wheiras 40 dayes, yea a year
before that, his wife and family dwelt at Strathaven. Answered, by the
King's Advocat, that no defence could be proposed for ane absent traitor.
(See the Advocat's Criminals, page 58.) Likeas, the 40 dayes ware
introduced in favors of pershuars, that if a man had stayed 40 dayes in
a place, tho it was not his residence and domicil, yet the pershuar might
conveen him ther, it founding *competentiam fori* against him, but not *vice
versa* that a citation should be unlawfull, if he ware 40 dayes absent from
his oun house. The Criminal Lords fand no defence could be proposed
for a traitor unlesse he ware present.¹ Some thought this hard, seing
tho we cannot defend *in causa*, yet I may propone *probabilem rationem*
et causam absentiae ane esoinzie of ficknesse, or say that he is absent *rei-
publicæ causa*, or not at all cited. Now, to be cited illegally at the wrong
place, and to be not cited at all, are æquipollent. *Quaritur*, If a creditor
of the rebels whosse debt is unconfirmed may compair for ane absent
traitor, and produce his interest, *videns rem suam agi*, so that he may lose
his money, and if he will be admitted to obje&t against the relevancy and
probation. Though it be very æquitable, yet it was thought it would not
be permitted, his being only a civil interest. For others, viz. Muirhead
of Braidiisholme, &c., it was alledged by Sir G. Lockhart, that its true
Advocatus fisci non præsumitur calumniare, yet gentlemen's lives, estates,
and reputations ought not to be brought in question without he con-

¹ Somervell of Urats was clenged by the assise. *Vide infra*, the assise pershued for it, page 202.

deschend on his informer, that he might subscryve *in paenam talionis*, both conforme to the civil law and to the laws and practise of all nations, and the 49 A&t of our Parl. held in 1587; for the very pershueing leives a stigma, though they be affoilzied. *L. 3. C. de generali abolitione.* The Advocat declared he had no informer; but the Privy Councell and Exchequer having employed one to take up lists of all suspe& perfones, he, by the Councell's warrand, now pershued them. The Justices fand the Councell's warrand sufficient to liberat the Advocat from condescending upon any other informer, tho this may evacuat the force of the said just A&t of Parl. *Vide supra*, page 165, Scot of Ancrum, and page 178, Earle of Caithnesse.

Then the Advocat offering to continue the dyet against the rest of the heritors, it was alledged, the dyet was peremptor, and behooved ather to be deserted, or else they immediatly tryed and put to the knowledge of ane affise. The Lords fand the Advocat ought to infist against such whosse witnesses in the list ware all present, but as to thesse who ware not in that case, continued them to June nixt, he peremptorily bringing in all his witnesses and infisting then, otherwayes the dyet should be deserted. At this tyme, the Criminal Lords got a præcognition what the witnesses could say with cloſſe doors; tho not upon oath, yet caused them subscryve ther declarations, that *quoad* such as they found no probation against they might desert the dyet, which abridged ther labor, ther being upwards of 70 or 80 on the pannell; but it was clearly *proditio testimonij*, and a dangerous novelty, engadging the witnesses to byde at what they say behind the pannell's back, and very irregular in the Criminal Court, wher, by 91 Act of Parl. in 1587, no probation can be tane but in preſence of the pannels and affise; and the use of theſſe precognitions have been only assumed by the Privy Councell. Tho ſome of them who ware continued or deserted (ſeeing new letters might heirafter be raifed againſt them) defired ther witnesses in defence and excution might be receaved to ly *in retentis ad probationem innocentiae*, leift they ſhould dy *medio tempore*. This was refuſed them, ſeeing the King ran the ſame riſk with his; yet they had præcognosced; but that declaration (if the witneſſe dyed) would not prove.

Eodem 18 Martij 1681.—The Privy Councell revoked the protection No. 589,
they had given to Samuel Macreith, in so far as he could make use of it p. 194.
against the Earle of Winton's debt, the Earle alwayes giving him 24
howers advertisement that in the mean tyme he might shift for himselfe.

8 Aprilis 1681.—Mr. Alexander Burton gave in a complaint to the No. 590,
Secret Councell against John Burton, his brother, for putting him in p. 194.
Hopkirk the chirurgian's hand, as if he had been a madman, which was
against the subje&t's liberty. Alledged, He was hypocondriak, and a
melancholy idiot, and sometymes furious, and therfor they had also a bill
in to the Lords, desiring they would cause secure him, and appoint some
to be curators to manage and administrat his fortune, because he misem-
ployed and dilapidated it. He answered, They had his portion in their
hands, and he was only craving his annuelrents; and to refuse him his
oune, and thrust him in *ergastulo*, and treat him as a fooll, would raise
peper and passion in any man's nose, and then they termed thesse acts
furie; for *ira est brevis furor*. In Scotland, we having no bedlam, we
commit the better sort of mad people to the care and taming of chirur-
gians, and the inferior to the scourge, the poor. The D[uke] of Albany
desired he might be permitted to speak, wheir he extravagated, so that they
inclined to affoilzie John his brother, and find that he deserved to be put
in a corre&tion houfe.

Eodem die [4 Maij 1681.]—The Councell having confidered Mr. Bur. No. 594,
ton's affair, (*de quo supra* this same page,) they fand he was melancholy p. 195.
and hypocondriack, and therfor committed him to the custody of his
brother, (he is to get the gift of the tutorie from the Exchequer,) which was
judged hard, he being his air and *alioqui succffurus*; and *tutores furiosi
dati*, like other tutors, if they be neareſt, ſhould not be truſted with the
keeping of their perſon. Yet ſee the A&t of Parl. 1585, and the Laws
of the 12 Tables their cited. *Vide supra* more of thir parties, page 204.

13 Aprilis 1681.—A poor woman was this day hanged at the Graſſe No. 591,
Mercat of Edinburgh, *pro infanticidio in proprium suum factum commiffo*. p. 194.
They ſay ſhee declared, one of the main temptations ſhee had to mur-

der her child, was to shun the ignominy of the Church pillory ; which the Duke of York hearing of, and informing himselfe of our custome, and that it was used in no other place of the Christian world, and that it rather made scandals than buried them, and increasced whoredome rather than brought the committers of it to any penitent fence of their sin, and that it was not used for drunkennes, swearing, Sabbath-breaking, lying, and other enormities ; the Duke was displeased, and thought it would be a more efficacious restraint, if the Civill magistrate should punish them, ather by a pecuniarie mulct, or a corporall punishment.—See ane essay *alibi* in another manuscript, marked , page , for justifieing this custome, from that text, “ They who sin openly should be rebuked openly,” and from the penances imposed in the primitive church : see Mr. Cave’s primitive Christianity, part 3^d, chapt. 5, page 352.¹

No. 592,
p. 194.

4 Maij 1681.—James Justice, late bailzie of Edinburgh, was pershuied before the Privy Councell to pay a fyne, because ther was a Conventicle keipt upon his lands of East Creighton, and he did not reveill and signify it, within 3 dayes after, to the Shireff, as the A&t of Secret Councell requires. He alledged, he was not dwelling on the place, and it was long ere it came to his oun knowledge. This was repelled. Then he denied the ground, on which it was keeped, to be his. They decerned him, ather to pay the 4 part of his valued rent, or else give a renuntiation of the land he disclaimed over to his Majesty.

No. 593,
p. 194.

Eodem die.—James Park, keeper of the tolbuith of the Cannogate, and Gordon, his servant, are imprisoned, because they suffered one Weir, who was ther prisoner, on his being in the Rebellion at Bothuel Bridge, to escape. Tho he offered to take the bond, yet he was detained, as having been a ringleader, who are excepted from the King’s A&t of Pardon and Indemnity.

¹ We may say of our pillory, what Tertullian (cap. 10, *De Spectaculis*,) sayes of the weemen preists of Flora, “ *Tanquam publicæ libidinis victimæ et hostiæ in Scenam proferuntur.*” See *Camerarij Meditat. Historic. Centur. 2. cap. 41.*

Eodem die.— merchant in Glasgow, on the late No. 595,
A&t of Trade prohibiting forrain cloaths and stuffs, petitioned the Coun-
cell for liberty to set up a manufactory for making the *sarge de mines*. p. 195.

Eodem die.—The Privy Councill deprived Patrick Broun of Colfton from being Shiref-depute of East Lothian, and fined him in 50 lb. sterling, because he had exerced and acted this 8 or 9 year in that capacity without ever taking the Declaration, though the 5^t A&t of Parl. in 1662, and the other A&t in 1663, forbids any to enter to any office til first they figne the Declaration, and declares them usurpers if they do otherwayes, and censureable. His excuses ware, that his loyalty and affection to the Governement, both in Church and State, ware nottorly knownen, and that he had tane it on Mounday laft, and now gave it in at the Bar subscrvied by him; and he had never tane the Covenant, which the said Declaration renunced, and he had never refused to take the Declaration, but it was never ministered to him by any. All which was repelled, and they recommended to the Duke of Lauderdale, Shiref principall, to fill the vacancy.—(When Alexander Gartshore and James Grahame had acted a while as bailzies of Edinburgh, and then declined to take the Declaration, all that was inflicted on them was only depofition without any fyne.)—See him reponed, page 198, num. 4, 2^d June 1681. See the following case.

4 & 5 Maij 1681.—The King's Advocate and [Robert] Norie, minister No. 596,
at Dumfermeling, exhibited a complaint at Secret Counsell against Sir p. 195.
Charles Haulkhead of Pitfirren, [Sir Henry] Wardlaw of Pitreivie, and
Master John Dempster of Pitlever, that they, being Justices of the Peace,
had acted in that office without taking the Declaration. 2^{do}, That they
sent to the said minister to come and give them in all the fynes he had
exacted of the fornicators in his kirk-session; and because he did not
attend, they ihued out a warrant to their officer, in a court keipit by
them in the afternoon, and not in the hower of cause, to apprehend
him, and bring him before them; which the Bischops thought ane
affront done to them, first, in calling for the fynes, and nixt, in meddling
with the person of a minister. Their defence was to the firſt, They
had tane the Declaration in other capacities and places, once or twice,

and none would doubt them ; and in this Court, as Justices of the Peace, they had taken [it] that day ; which they humbly conceived to be sufficient. As to the 2^d, what they did was warrantable ; for the instructions given to the justices of peace, A& 38, Parl. 1661, page 73 ; see this also in A& 22, Parlia^t 1672 ; they had power to call in all the fynes for violation and transgrefſion of pænal statutes, ſuch as drunkenneſſe, Sabbath-breaking, &c., and tho fornicators be not mentioned (fornicators are mentioned in the forſaid, page 73,) yet it is included in the general, being a pænal statute, Act 13, Parl. 1567 ; that they applied theſſe fynes for publick and pious uſes ; for repairing the hy-wayes, mending bridges, &c. ; and the minister had no right to retain them, nather could he im- poſe them without a magiſtrat, he having no civil jurisdiction, and the kirk- feſſion being no court or judicatory, approven by any ſtanding law, but meerly precarious, ſince the A&ts from 1640 to 1660 ware all reſchinded, (yet ſee the 16 A& Parlia^t. 1661,) and what they had done was cuſtomarie ; and, *efto*, they had exceeded, *error communis facit jus pro præterito*.

Notwithſtanding of all this, they having private ennemis in the Coun- cill, they ware deprived, and fynd each of them in 25 lb. ſterling. And becauſe Pitlever was likewayes Bailzie of the regality of Dumfermeling, and had not timeouſly tane the Declaration, (tho all ther principles ware knownen to be unexceptionable,) they turned him out of that alſo, and fynd him in 50 lb. ſterling, over and above the 25 lb. ; and fand no inferior court ought to be holden but in the hower of caufe, which is betuixt 10 and 12, at leift they ought once to ſit doun within that ſpace, and then they may adjourne and continue themſelues to after dinner. If they examine all the offiſes of Scotland, they may overtake many, and bring in a great ſumme. But ſome wondered at the policy, why ſnares ſhould be laid by ſuſh teſts for men repute loyall, which was to irritate them ;— and what ſhall we doe to ennemis, if friends be thus uſed ?

No. 597.
p. 196.

Iijdem diebus, 4 & 5 Maij 1681.—Rankeilor gave in a bill to the Coun- cill, bearing that Sir James M'Gill his ſone having been ſo unfortunat as to kil Balfour of Denmiln, and his Maſteſty having granted him a re- miſſion, to which the Exchequer added this quality, that he ſhould never

be sein in Fyfe to prevent bloodshed ; and that the petitioner being now a dying, and earnestly wishing to speak with and see his sone, therefor begged they would relax so much of the punishment as to allow his sone to come and see him. The Councell doubted if they might doe this ; but the Duke of Albany affirming, that he beleived the King would not refuse this desire of any old dieing gentleman, they granted it in thir termes, that he should goe with a guard like a prisoner, and stay but 24 howers, and then depart out of Fyfe, wher the freinds of him that was killed live.

2 Junij 1681.—The Lords make ane A&t of Sederunt anent the clerks No. 598. minutis, that they be written during the debate, and anent the dispatch of ^{p. 197.} reports. See it in my collection of the A&ts of Sederunt.

2 Junij, post meridiem.—At Privy Councell, their is a complaint made No. 599, by my Lord Hatton, tresurer-depute, against some of the wrights and ^{p. 197.} masons of the Cannongate for a ryot, on this occasion :—He was building a lodging for himselfe in the Canongate, and having employed some country masons, unfree-men, at his work, while he is at London, the masons of the Cannogate come violently upon them, and takes away ther tools. This was represented as a dounright breach and violation of the 111 A&t of the Parl. 7, Ja. 5^t, in 1540, ratified by the 4^t A&t anno 1607 ; which A&ts permit the lieges to employ craftsmen, freemen or others, for bigging, or doing ther work. Alledged, the trades of the Cannogate have been in the immemoriall use and possession of hindring and debarring unfree-men from working within ther liberties ; yea, in the case of Samuel Cheifley's dead-chift, they would not suffer a wright of the toune of Edinburgh to work within the bounds of the Cannogate. It was thought the trades of Edinburgh, by ther ere&tions unto corporations, and ther sealls of causes, ware stated in the priviledge of hindering any unfreemen from working any part of ther calling within the bounds of the brugh royall, but ther suburbs (which are no part of the royalty) could not clame this priviledge ; and that the unfreemen in Borland's houses at the Westport, called the King's stables, ware affoilzied, and found not liable to the trades of Edinburgh, because thesse stables ware no part therof ; yet now

the tounes got a right theirto. I remember, in 1671, the Privy Councill fyned David Pringle, chirurgeon, for employing one Wood, ane unfreeman barber, to exerce his calling in polling the children's heads in Heriot's Hospitall; and lately the skinners and glovers did poind some of the merchands gloves, because, tho they ware freemen, yet they ware not free of the calling to sell gloves. Tho the merchands reclamed, yet the forsaide A& James 5^t seemes even to extend to brughes royall, which some expounded thus: If a freeman refuse to end my work, or desert it, then I may employ ane unfreeman; but the A& will not bear this, for it has a posterior clause for that. The King's Advocat acknowledged, that both brughes royal of baronies and regalities might hinder me from bringing in ane unfreeman, with whosse work I should keep a shop and sell out what he made to others, such as a tutor, &c. And this has been a long controversie betwen the toun of Edinburgh and the members of the College of Justice, if they might keip a taylor, unfreeman, to make cloaths to himselfe and family; but the Advocat alledged, every man might lawfully employ any tradfman (tho not free in that brugh or place) to work any work to himselfe, which he was not to sell or make any profit of as ane artificer. And so the Privy Council fand the libell relevant against them, tho many thought the bygane custome wheirby they have been in use to debar such unfreemen was sufficient in law to excuse them from a ryot, and only reproove them, and discharge the like in tyme coming. But the Council will try from the witnessses and probation if ther was any violence used at the interruption, or if they had any warrand of concurse from the magistrat; (tho the trades of Edinburgh feik only one general concurse to serve for all the year;) for if they find they had a warrand, and used only a civil interruption to preserve ther pretended right, it is hardly imaginable how it can be made a ryot.¹

2^{do}, The privat scoolmasters in Edinburgh being called before the Privy

¹ Why shall I be tyed to use freemen, if others be more dextrous and expert then they, and will work cheaper; to debar such ware a manifest prejudice to the people; tho, on the other hand, the freemen retort this argument, that they are answerable for the goodnesse of the work, wheiras unfreemen escape unpunished after they have cheated the leidges. Likeas, they payed not such prentis fees, neither doe they bear burden as the freemen doe.

Councell, and complained on by the Mr. of the High Grammar Scooll, (one school is far from being able to serve Edinburgh now); ther are Mr. Strang, Mr. William Greinlaw, and 2 or 3 others of them imprisoned till they find caution not to teach Latin till they be licenced by the Bischop: for severalls of them ware outed ministers, and others who ware suspected to poison the young ones with disloyall principles; so that the Regents of the Colledges defended themselves, that many of ther youth ware infected and leavened ere they came to them; and even when they are licenced, not to teach the grammar, but only the rudiments and vocables; for then the children may be come to that strenth as to go to the Hy Schooll.

3^{to}, A letter was red from the King, declaring the Duke of Lauderdale governor of Edinburgh Castle, and Lundie his deputy, and the garrison independent on the Lieutenant-General of the forces, and only accountable to, and to receive orders from, his Majesty. And a motion being made, that General Dalziel was postponed both in the rolls, and his place of fitting in Councell, being put after the inferior Officers of State by the last commision, the Councell placed his Excellence nixt to the nobility, and before all the gentlemen upon the Councell.

4^{to}, The Lords repone Colfton to his place again. *Vide supra*, page 195.

5^{to}, Ther is a libell given in by Skeen of Halyeards, in Lothian, against Alexander Milne, provest of Lithgow, for oppression and concussion, in abusing his office by threatning and hectoring him. Alexander had also a reconvention against him, that being his Majesty's lieutenant and deputy in that toun, yet Halyeards, without any provocation, had given him most opprobrious and unworthy reviling langage, as villain, knave, rascall, &c. Both ther libells ware admitted to probation; but throw the intercession of freinds, they ware agried.

Eodem, primo Junij 1681.—One George Fullarton, a merchand in No. 605, Edinburgh, having bribed some of the King's sub-customers and waiters, p. 200. and under night stealing in some packs of English cloaths at the West port, and they being now absolutely prohibite by the late act of trade

made in April last, and being discovered by one Lindsey, a merchand, and seized on and laid in unto a house till the nixt day, Fullarton, the ouner, came with 10 or 12 hyred workmen, and violently broke up the house wher they lay, and carried them away. This being complained on to the Privy Councell, they ordained the 2 waiters to be scourged throw the toune, and Fullarton having fled, was declared fugitive, and search was ordained to be made for thosse who affisted him; and the cloaths (so much as ware not rescued) ware (conform to the appointment of the said a&t of trade,) brunt by the hand of the hangman, at 12 o'cloack, at the crosse; [interlined] (but it was only the worst bales, but the fyne cloath was privily preserved,) which many thought might as charitably have been employed for cloaths to poor people; however, this, as it was the first exemplary act of that kind of forfaultor and punishment borrowed by us from England, so it was the first exercise of Couburne, the new hangman's employment, he being installed on John Whyte's decease. See A& 89 of the Parl^t. 1587.

No. 628, 6 Julij 1681.—English cloath brunt at the crosse. *Vide supra* page p. 206, § 2. 200, Fullarton [No. 605.]

No. 607, Decimo Junij 1681.—John Spreul being pannelled at the Criminal Court for treason, and that dyet being deserted against him, and a new summonds of treason given him in the very Court, at the bar, by a herald in his coat, with sound of trumpet, for being with the rebels at Bothuell Bridge, (tho he produced testifcats that he was in Ireland all that tyme,) and for being present at Cargil's excommunicating of the King, (but naked presence heir was not treasonable, without some farder concurse and accession;) and it being alledged for him, that being put to the torture, and having persevered therein, without confession of the crymes laid to his charge, the same purged all the præceeding *indicia et præsumptiones* that urged him, so that he can never be quæstioned on thesse again, except new præsumptions should emerge against him; as was found in the Criminall Court in 1632, in the case of Toscheoch of Monyvaird, accused for burning the Tower of Frendraught. It was answered by the Advocat, that ther ware farder præsumptions, *quæ eum gravabant*, which are *noviter*

venientes ad noticiam. 2^{do}, His denyall in the torture could never purge, because thesse who examined him in the torture had no power nor commiffion from the Privy Councell to ask thesse queſtions at him, and he was not bound to have answered beyond ther warrands ; (and yet it would have been thought presumption eneugh in him to have sought to limit them to ther commiffion.) The Criminall Lords repelled the defence, and fand the torture purged not the præceeding *indicia*.

2. Whereon, upon the 13 of June, the said John Spreul was tryed at the Criminal Court, and probation led against him ; who deponed they saw one called John Spreul with the rebels at Bothwel Bridge, but they knew not if the pannell was he ; and ther being another of that fame name present in the Court, (who confessed his being at Bothwel Bridge, and had taken the benefit of the Indemnity,) to whom all the tokens and descriptions they gave agried more then to the pannell ; as the cullof of his horse, his having a cap and not a hat, with a black perriwig, &c. The affife upon this clenged and asoilzied him ; notwithstanding wheirof the King's Advocat procured ane order from the Privy Counsell to detaine him still in prison till he got a new indytement, which was the 3d, viz. for treasonable exprefſions uttered by him before the Counsell, ſuch as refusing to call Bothuel Bridge a rebellion, or the affaffinating and killing the Archbiſhop a murder ; which laſt is no treason, tho it be a very perverſe opinion.

3. On the 14 of June, the King's Advocat having complained to the King's Counsell, that the witneſſes led againſt Spruell had prevaricated and deponed falſefly, at leift did conceall ther knowledge ; it was moved by my Lord Haddo, and approven of by the King's Advocat, that witneſſes, in ſuch a caſe, might be tortured, when they vary, as weell as parties. This is, indeed, agriable to the Roman law, but does not ſute the genius of our nation, which looks upon the torture of *the boots* as a barbarous remedy ; and yet of late it hath been frequently uſed amonſt us. I think, however, theſſe witneſſes deserve to be punished ; yet the affifers ſhould not look upon the testimonies of ſuch witneſſes as a full probation, it not being ſpontaneous or voluntary, wheir ather they are threatned with *the boots*, or tortured.

4. After all this, on the 14 of July 1681, Spreul is brought before the Privy Councill, and fyned in 9000 merks, for refusng to depone anent his presence at Conventicles, the same being referred to his oath, conforme to the 2d A&t of the Parl. in 1670; and he was ordained to be sent to the Basse till he payed it.

No. 613, p.
202.

16 June 1681.—At Privy Councill, a præcognition was taken for preparing a dittay, by ane Affise of Error, against James Baird younger of Saughtonhall, Mr. Andrew Temple of Revilrig, Dundas of Jerviston, James Bailzie, Thomas Noble, and Robert Sandilands, merchands, Robert Elliot, Hugh Johnston, John Binny, Alexander Blair, and others; the affisers, who had on the 18 of March last clenged Somervell of Urats, and sundry other heritors, who ware pannelled for being at Bothuel Bridge, tho ther was clear probation against them. The 15 affisers ware called in, one by one, before the Councill, and interrogat to declare (but not upon oath, which is a new method,) whither they voted *fyles* and *condemnes*, or *clenges and affoilzies*; (for it was not marked in the verdi&t how every particular man voted, as should have been done, by the regulations of the Justice Court, and ratified by the 16 A&t of the Parl. held in 1672.) Some 4 of them had found Urats, &c. guilty, which they declared, and so ware freed. Others craved pardon for ther clenging him, and came in the King's will and mercy. Some said, they did not remember how they voted. Others more stoutly adhæred to ther verdi&t *absolvitor*, and that, in so doing, they had served both ther light and conscience. The Councill remitted them to the Criminal Court, to be pannelled their, on the 63 A&t of the Parliament held in 1475, *tanquam temere jurantes super affiram* and to be judged by ane great affise of 25 noble persons, *id est*, gentlemen at leist.—The libell uses to be in Latin, and under the Quarter Seall.

This was a strange tryall, contrare to the nature of all other præcognitions tane at Privy Councill, wher they ware ever designed in the pannels favors for mitigation, and never to his prejudice, as here. Ther was never any of thesse Affises of Error, that ever took effect in Scotland before this. But see one learnedly debate in December 1635, (it's page

315, of my Criminall Collection, and takes up 8 leiffs and a halfe ther,) against the assisers who clenged James Gordon for wilfull resetting and intercommuning with Alexander Leith and Nathaniel Gordon, open rebels ; which being so full, I neid repeit nothing on this occasion heir. On the 25th of July 1681, the libell against them was sustained as relevant, by the Criminall Judges, and, after much difficulty, was found proven by the Affize of 25, (tho they had packed them, making the major part of them to be Officers of the Forces, and other dependers,) against 7 of them, (the rest having come in the Kings will,) who, *ad terrorem* of others, ware imprisoned, fyned, and declared infamous, on the said old A& of K. James the 3^d, in 1475 ; tho, generally, this sentence did not beget them any reproach.

[21 Junij 1681,] *post meridiem*.—At Privy Counsell, upon a motion No. 616, p.
from the Duke of Albany and Y[ork], the Magistrats of Edinburgh
^{203.} ware called in, and it was recommended to them to call the merchands before them, and discharge them to extortion the liedges, by taking great and exorbitant prices for the merchandices now prohibited to be heirafter imported by the late proclamation, on the pretence, that ther ware no more of that kind to be imported within the kingdome.

2^{do}. Ther is a petition given in by the King's tradsmen, such as the King's taylor, mason, wright, smith, &c., craving to be free of all watching, wairding, taxes, and burdens within the Toun, which they not only founded on ther gifts from the King, but also on the 153 A& of the Parliament 1592, and the 275 A& in 1597, allowing his Majesty to exeime one of every trade from thesse things. But this was when his Majesty was personally amongst us, and since it hath run into desuetude.

3^{to}. One Erskin pershues one Robert Scot, before the Councell, for defaming, calumniating, and scandalizing him, by saying he had broke up his chop, and stollen gold money and wair out of it. The defence was, that he wanted not præsumptions to move suspition and jealoufie that he was accessory, for he offered a guiny not to stage him before the Bailzies of Edinburgh, &c. ; *et quælibet probabilis causa excusat a calumnia et con-*

vicio. The Lords admitted both the libell and defence to probation, and after advising, they fand the libell proven, and fyned the said Robert Scot in 100 m^{ks} for his calumny.

4^{to.} The Lord Rollo pershues Craigie of Dumbarny for manifold acts of oppreßion of the poor country peeple in Perthshire round about him, not only for injuries done to himselfe and his tennents, but also, (as if it had been *actio popularis*,) for injustices done by him to many others. The Lords having advised the probation, they fyned him in 5000 m^{ks}, and ordained him to goe to prison till he payed it; as also, decerned him to ly ther till he payed the dammages of all that should complain and prove themselves to have been greeved by him.

5^{to.} John Burton complains of Mr. James Cunyghame, wryter, that he seduces his brother, Mr. Alexander Burton, whom the Counsell fand hypochondriak, (see this *supra*, page 194,) and ordained John to have the custody of him, and yet Mr. James abſtracts his person, and holds him up, and heightens him in his melancholy humours. The Councell referred the tryall of this to the Bishop of Edinburgh and my Lord Abotſhall.

No. 622, p.
205.

23 Junij 1681, *Poſt meridiem*.—The Toun of Kirkual, in Orkney, was fined by the Privy Counsell, on a complaint given in by Captain Andrew Dick, for refusing to accept prisoners sent by him as the King's Stewart of Orkney, and combyning among themselves not to buy from him any malt or bear, wheirby the King's rent ther happened to be the worse payed: yet men are free to buy where they please.

Item.—Four of the men called the “Sweit Singers,” viz. Gibb, Young, Jamison, and Kerr, who had framed a moft ridiculous paper, that was printed, (of whom see my Historick Manuscript, marked [G.,] page [14];) turning more sober, retracted part of their former extravagancies, and, before the Secret Councell, declared they thought it not lawfull to rise in armes against the Magistrat's authority, tho in ther printed testimony, the Spirit did then suggeſt the contrare to them. Some of thir weemen Singers ware fo rude, as to throw out broken chandlers, and other trash, at the Duke of York's coatch, as it paſſed by the Canogate prifon; for which they ware ſeverly laſhed.

30 Junij 1681.—At Privy Councell, Edmiston of Duntraith is fyned No. 624, p.
in 9000 mks, and to ly in prison till he pay it, and that for refusing to
depone : 1^o. Anent his conversing and intercommoning with one Mr.
Foster, a minister, denunced fugitive for conventicles : 2^o. Anent his
having been at field-conventicles : 3^o. Anent his unduetifull reviling of
the Privy Councell, calling ther proceedings arbitrary and tryannical.
On all which points he was urged to depone, both from the 2^d A&t of
Parl. in 1670, and from the King's Letter in 1674, refri&ting the punish-
ment, in caife they confessed, to ane arbitrary mul&t. Tho Sir George
Lockhart alledged, the A&t of Parliament might indeed compell Duntraith
to depone against others, but not against himselfe ; and that he behooved
first to have a remission past the sealls ; and the King's Letter was not
æquivalent theirto. All which was repelled, and he holden as confess for
not deponing, and fyned. *Vide infra*, pag. 272, Lady Cavers.

[*7 Julij*] 1681.—At Privy Councell, the former day, a complaint No. 631, p.
having been given in by Lanton, and some other gentlemen of the
shire of the Merse, that the Earle of Home, Shireff, intended to surprize
them in ele&ting ther Commisioners to the Parliament, in giving them only
one day's advertisement ; the Lords then did præfix the 13 of July for
ele&ting.—The Counsell this day, on a Bill given in by the Earle as
Shireff, fand by the A&ts of Parliament, the Counsell ware not the parties
who could set dayes for the Heritors conveening and choising ther Com-
missioners to Parliament, but only the Shireff. Yet they ordained him
to give a competent space of advertisement, at leist 6 dayes, that they
might have tyme and leisure to conveen, and that his intimation be made
at the head brugh of the shire, by proclamation over the mercat crosse,
and by touck of drum throw the toune, that it may come to all ther
knowledge.

Item.—Mr. Archbald Hope of Rankeillor, Advocat, (because he had
voted against the Duke and the Court fa&tion, in the ele&tion of the Com-
missioners for Fyffe,) is per&hued before the Privy Counsell, for absence
from the King's hoist at Bothuel-bridge : against which he proponed
on his privilege as ane Advocat, (of which exemption, *vide supra*, in

March 1680, page 142,) and that he sent a man and a horse for him. The Privy Counsell repelled this: So that out of pique, the Advocates' priviledges ware at this tyme subverted and overthrown; but they remitted to a Committee, to consider how far his sending a horseman should alleviat.

No. 634, p.
207.

11 *Julij* 1681.—Two weavers of Kinneuchar, in Fyffe, one called Pittillo, and the other Philp, were condemned at the Criminal Court, for denying the King's authority, and calling him a tyrant, and thinking it lawfull to kill him. They ware hanged for it at the Graffe mercat, on the 13 of July.

No. 639, p.
208.

15 *Julij* 1681.—The Privy Councell having named a Committee, to order and adjust the differences in riding the enshueing Parliament, the Lord Sinclar put in his clame for præcedency before many old Lords, (and particularly my Lord Semple, who by the decree of ranking *apud me* in 1606, is placed before him.) He was opposed, as only being descended of the last Lord's daughter, and tho the patent boor *hæredibus* in generall, yet that, in the old feudall construⁿction, signified only airs male, and so he could not claime ther place, but only came in as a Lord of a new creation. Some advised him to forbear ryding at this tyme: however, the Councell declared they would continue him in his posseffion, till in a declarator he ware postponed to thesse other competitors, and accordingly, he took præcedency in the Parliament, and voted before them;—but as Sinclar rode up first, so Semple rode doun the way first; and Sinclar was more at this tyme a follower of York's then Semple was.

2. It was controverted betuixt George Sinclar Earle of Caitness, and John Campbell, likewise Earle of Caitnesse. The Counsell determined, that George should take the place due to that Earle, and Glenurchy shoulde be created Earle of Braydalban, Lord Pentland, Holland, and Glenurchy, &c., of a new date only.

3. The Marquis of Douglas produced his charter from King James, giving him right to carry the Crown at Parliaments, Coronations, &c. It contained also, the priviledge of leading the vanguard of the army,

and of the first vote in Parliament, (of which last he is not in possession.—Mar carries the Scepter, and Argyle the Sword.

4. *Item.*—It was debated betuixt Erskin of Cambo, *Rex Fæcialium*, Lyon King at Armes, and Sir Archbald Cockburne of Langton, Heritable Usher, (*Ostiarius aulæ et Parlamenti*), mentioned in the Laws and A&ts of Malcolme Mackenneth, cap. . . .), who should goe neareſt to the King's Commissioner. The Lords, by ther printed order regulating this and the rest of the manner of ryding the Parliament, appointed the Lyon and his brethren heralds, to præceed the honors immediatly, and the Usher to ride before the Commissioner, but a litle of at a syde, that he may not be interposed betuixt him and my Lord Lundors, who carries the Commission-purse ; so that if the King himselfe ware present, he would ride immediatly before him. See ſomewhat more of this Parliament in my folio Historique Manuscript, marked G., page 20, 22, and 23.

21 Julij 1681.—The Royall Burrows and their agent againſt the Brugh No. 641, p.
of Selkirk, for choicing Sir Patrick Murray, (who was not an actual re-
ſidenter amongs them,) to be their Commissioner, contrarie to the King's
letter in 1674, and the A&t of Burrows, on which A&t they charged him
and the Brugh ; and he presenting a Bill of ſuspenſion, (the Duke of
York was present at the debate;) and the Lords fand the ſaid Toun of
Selkirk had contraveined the King's letter, and A&t of Burrows made
theron, discharging the Burrows to elect any to represent them, but
actuall traffiquing and refidenting burgeſſes ; and in the laſt Convention
of Estates, in June 1678, none but ſuch ware admitted ; (but I think it
would be eneugh in law, that they had once been burgeſſes and traffiquers,
ſee the debate in Februar 1673, betuen Sir A. Ramsay of Abbotſhall and
Francis Kinloch and others, founded on the 8^t A&t of Parl^t in 1609 : it's
in the folio Manuscript A., folio 166;) and fand the ſaid A&t of Burrows
obligator, and that Selkirk had incurred the fyne ; which was alledged to
be 1000 mks each voter, they being 19 persons on the Counſell. But
this fancy of the King's Advocats was rejected by others, who, more
analogically to law, thought the ſaid 1000 mks. was only due by the wholle
aggregate body of the community electing. But in regard, by the Act of

election, it did not appear who had voted to Sir Patrick, they directed a commission to Hayning, and some other neighbouring gentlemen, to take the oaths of all who gave suffrage, to whom they gave ther votes ; and reserved to themselfes to modify the fyne at the advising. Which commission the Lords knew could not be reported this Session, and so upon the matter, the decision of the quæstion devolved to the Parliament itselffe; especially seeing, in law, the election might be valid, tho they had incurred the penalty, like a tack set by a minister without consent of the patron, (as is recorded by Dury, 9 Novembris 1624, Sir Thomas Hope *contra* the Minister of Syres.) Yet all this cautiousnesse did not keep the Lords of Session from the censure of some, that they, on the nose of a Parliament, came so near the deciding on dubious elections, which seemed only competent to the Parliament it selfe ; but the Duke of Albanie's presence influenced somewhat this decision. However, this justified them, that the Parliament, by their judicative power, voted and found all the elections of gentlemen for Borrows null, unlesse they ware actuall residenters and traffiquers ; tho of old they used to be represented by any they thought fit to choise, tho they ware not actuall traffiquers nor residenters. See the Minutes of Parliament besyde me for this page.

No. 642, p. 210. *Eodem die.*—At Privy Councell, Philiphaugh and Meldrum's case was again tabled, to terrify Philiphaugh (who was chosen a Commissioner to the Parliament,) from ouning the Country party ; and Philiphaugh's Shireff-depute was imprisoned for conversing with rebels, and for retarding the King's service on his oune private peiks. See thir parties, *supra*, pages 168 and 174.—*Vide infra*, pag. 222, thir parties.

No. 648, § 2, p. 222. 6th Octobris.—At Privy Counsell, the processe betuixt Meldrum and Philiphaugh (*de quo supra*, pag. 210) being this day advised, the Counsell fand Philiphaugh had malversed, and been remisse in punishing conviculars, &c.; and therfor they simply deprived him of his right of shireffship of Selkirk, (it not being hæritable, but bought by King Charles from his father,) and declared it was devolved in the King's hands, to give it to any other. Some said, seing the Dutchesse of Lauderdale's courtship, by which he had stood, was now dryed up, he came weell of that he was not likewayes fyned.

[21 *Julij* 1681.]—George Dickfon of Hedderweik, perhues James No. 642,
Hamilton, merchand, for a ryot, for breaking up his truncks without ^{p. 210.}
any authority of a magistrat, and taking papers furth theirof ; which
was admitted to probation.

24 *Julij* 1681.—The Affise of Error was sustained ; *de quo supra*, No. 642,
page 202. ^{p. 210.}

26 *Julij* 1681.—M^r Donald Cargil and 4 of his disciples ware condemned No. 643,
for rebellion, and disouning the King, and hanged the nixt day : but see ^{p. 210.}
this at lenth in my Historick Manuscript, marked G, page 22.

The Parliament approaching to sit dounie, (viz. on the 28 of July,) the No. 644,
[O]utter-house of the Seffion, that the hall might be prepared, rose on the ^{p. 210.}
21 of July, and the Inner-house on the 23.

Besydes thir decisions, marked by me *supra*, ther ware some other Law
Observes this Summer Seffion insert by me as they occurred, in a 4^{to}
Manuscript marked A. 7, from the beginning to the 9^t page theirof, which
ware not insert heer, because I knew not ther precise tymes and dates.

OF THE PARLIAMENT 1681.

The Scots Parliament sat dounie on the 28 of July 1681, of which see
the forsaid manuscript G. page 22 and *seq.* I have so many remarks on
the occurrents of this Parliament dispersed in other manuscripts, that ther
is little left for this but gleanings:—See the manuscript intituled The Minuts
of Parliament, which is a journall and abbreviat of what passed every
Parliament day. *Item*, the said Historique Manuscript G. in the forcited
20, 22, and 23 pages. *Item*, the Theologick 4^{to}. Manuscript, marked A.
5, pages 84, 86, 87, and 88, but especially page 94 and *seqq.*, wher ther
are sundry things anent the Succession to the Croun, the Confession of
Faith, the securing the Protestant Religion, and the Test. *Item*, the

thick 4^{to} Manuscript P., folio 43, *et multis sequentibus*, wher is the draught of the A& that was craved for securing our reformed religion, tho another was substitut in its place ; with some observes on it and coronation oaths. *Item*, some reasons against the Test imposed by this Parliament, with sundry other remarks and explanations of the said Confession of Faith and Test. See the manuscript A. 5, page 94, *et multis sequentibus usque ad finem*, wher the Test is largely considered with the Confession of Faith.)

The first thing the Articles and Parliament began with was, the constituting the House, and the determining and discussing the debateable and controverted elections, which ware only of five Shires, viz.—Peibles, betwixt Sir A. Murray of Blackbarrony and Nasmyth of Posso, wherin Blackbarrony was præferred ; East Lothian, betuen Adam Cockburn of Ormiston and Andrew Fletcher of Salton, on the one hand, and Wedderburne of Goffurd, and Hepburne of Humby on the other, wheir the 1 tuo ware found more legally elected ; the 3^d was West Lothian, wher Hopton and Generall Dalziell was præferred ; the 4^t was th^c Merse, betuen Mr. Charles Home and Edgar of Watherly, wheirof the last was sustained ; and betuen George Ramsay of Idinton and Home of Wedderburne, which was left undiscussed ; and the 5^t was in Stirlingshire, betuen Elphinston of Airth and Stirling of Keir, who ware sent back to re-elect ; and it returning dubious for the 2^d tyme, the Parliament præferred Airth.

In Burrows, Riddel, Provest of Rutherglen, was first imprisoned and then set at liberty, but suspended from his vote on ane accusation of treason against him, for affliting some of the Rebels at Bothuel-bridge. The elections of Mr. Suity for North Berwick, and Sir Patrick Murray for Selkirk, ware rejected. Pitlever for Innerkeithen, and James Anstruther for Anstruther, and Cunynghame for Air, [and] Sir James Dick for Edinburgh, tho quarrelled, yet ware sustained. Many pretty law questions occurred to be debated in discussing thir elections ; some heritors who had voted to the election of Commissioners ware not expressly retoured to a 40 shilling land, but ware designed so many oxengates. On this occasion Skein, *de Verborum Significatione, voce Bovata, terræ*, was cited, who affirmes 4 oxengate makes a pound land, so then 8 oxgate are a 40 shilling land. (Anent the speciall questions which occurred to be debate in

thir controverted ele&ions, see the informations of severalls of them
besyde me.)

It was at this tyme started, If temple lands now holding of the King can
be so repute kirklands as att leist a man most have 10 chalders of vi&uall
or 1000 lb. by year of them, ere he can clame a vote to elect or be ele&tred.
See arguments *alibi* from Bengæus, &c. why they are not church lands.

The Bischop of Edinburgh was heard say, in the debaitable election of
Eist Lothian, that for serving the King, the Committee might verie law-
fullie præfer one who was inferior in votes, and they might passe over 4 or
5 votes, to hold out a Shaftsburie : which was spoke verie like one who
minded his Parliament oath *de fideli*, to judge according to law !

Item, Upon occasion the 13 A&t of Parliament 1585, was urged by Sir
John Cunynghame, bearing that the King can grant no warrand for im-
prisoning any person, unleſſe it be likewayes subſcribed by 4 at leift of his
cheiff Officers of State : which is ane excellent Act for ſecurity of our per-
ſons, that by privy writings we be not imprisoned, without a hearing, or
ſome judiciall ſentence and convi&tion againſt us. *Vide infra*, p. 217,
No. 14.

Third. In the A&t of this Parliament, anent the aſſerting the Succeſſion to
the Croun, theſſe words (which are tuife repeeted) are very materiall, and
deserve deep conſideration : “That it ſhall be treason to alter, invert, or
ſuspend the nixt air from the administration of the governement, accord-
ing to the laws of the kingdome.” *Ergo*, the alledgiance ceaſes, if the
nixt air administrat contrare to the ſtanding laws for the Protestant
reli&ion, or ſeek to introduce Popery. This conſequence is the ſame with
what is deduced from the 15 and 25 articles of our old Confeſſion of
Faith in 1567, limiting our obedience to the Magiftrat whille he does the
things appertaining to his office, duety and charge.

Fourth. When the A&t anent the Test was brought in and red, the Lord
Belhaven ſtood up and ſpoke to this purpoſe, “That he ſaw a very good
A&t for ſecuring our religion from on another among the ſubjects themſelvſes,
but he did not fee ane A&t brought in to ſecure our Protestant religion
againſt a Popiſh or phanaticall ſucceſſor to the Croun.” Which words being
reſented, as if he had meant to ſpeak againſt a Popiſh ſucceſſor’s coming at

all to the Croun, which the word *Against* seemed to signify and import, and which was now declared treason by the late A&t of Succession ; and it being pled, in the hurry and outcry that was raised by some against him, that he might be admitted to explain himself ; and that being granted, he said, “ He was not so much meaning of what might be at present, as what might fall out 100 years hence.” This was not judged satisfactory, but called by some of the Court party worse then the former ; and so, by a vote [he] was sent to the Castle ; and the Advocat declared ther was matter for ane accusation of treason against him. Yet some dayes therafter, he was, on his submission at the bar, restored to his bench again. When the vote was asked, “ Secure and imprison, or Not ?” and the Bischops ware all voting for the affirmative, Sir George Lockhart moved, that being a criminal case, the Bischops ought not to vote therin ; notwithstanding wheroft, they would not decline themselves, but proceeded. See this debated in papers besyde me, in the case of the English Bischops fitting in Parliament ther, pretending they are ther not as churchmen but as peers.

Certainly Belhaven’s meaning (however he worded it) was orthodox and good ; that he saw not ane A&t securing the Protestant religion from being altered, in case a Popish successor cam to the Croun ; which was the main point to be obviated, and for hindring wheroft his Majesty had made large offers in England of limitations and restrictions to be put on a Popish successor. Pitmedden represented, that he hoped it was not intended they should be sworne to Episcopall Governement as unalterable, seing Stellingfleet, and many eminent divines, called it only *Juris Carolini*. This was tane very ill by the Bischops ; and Edinburgh told it was at leist *Juris Apostolici*, if not *Divini*. And yet this evidently clashes with the King’s supremacy, by which he hath the power to set up what externall governement and policy in the Church he pleiseth ; as also it contradic&ts our old Confession of Faith in 1567, cap. 21, wher one Policy in the Church will not serve for all places, tymes, and ages. (See more of this Test and the Confession in the above cited places referred to in the præceding page ; but above all, for the Test and Confession of Faith, see the said manuscript A. 5, page 94, & *multis paginis sequentibus usque ad finem istius libri.*)

One of the main designes of this Test was, to get elections of Commissioners in shires and burrows so packed, as none should vote but thesse who took this Test, which will seclude all strict Presbyterians, as weel as Papists ; for I cannot see how ane honest Papist can swear this Test.

Fifth. Ther ware many complaints, some of publick affairs, and others of privat concernes, tabled before the Articles, ther to be prepared for the Parliament, such as—1°, A bill given in by Sir David Carnagie of Pitt^{No. 644, p.}^{212.} arrow against my Lord Halton, Earle of Northesk, Scot of Brotherton, and others, for reducing a decreet of Parliament pronounced against him in 1661, and obtained by the deceased Earle of Dundy, wheirby the Parliament annulled a disposition Pittarrow had got from his cusin, the Laird of Craig, of thesse lands, in prosecution of a former tailzie, and with the burden of his debt, because it was alledged to have been granted after he was made drunk, and without onerous causes, yet the witnesfes ware not examined upon oath, which see in the manuscript A., in June 1661, folio 50. The Articles granted Pittarro a warrand on his bill, to summond all the parties concerned, as also to call for the testimonies and other grounds and warrands of that 1 decreet against the Clerks Register or other havers, and that to the 15 of September 1681.

2^{do}, A complaint was exhibited by one William Noble of Dinnotar, or Kipperminschoch, one of the Commissioners for Dumbarton shire, against my Lord Halton, for perjurie, in so far as he deponed in Mr. James Mitchell's criminall tryall in that he 1678, knew no promise of life given him ; and yet, by a letter produced, all written with his oun hand in 1674, direct to the Earle of Kincarden, he wrot that Mitchell had confessed, on a promise of life given him by some of the Committee of Councell, (meaning the Chancelor,) that it was he that shot the pistol at the late Archbischop of S^t Andrews, in July 1668,—which contradic^ded his oath. But some thought, albeit he had not deponed so cautiously, yet it was not precisely perjury, seing his letter proceeded on a rumor and misinformation that promise of life had been given him ; which the Chancelor having denyed upon oath, before Halton deponed, it cleared him that he and others had been in a mistake ; and so he needed not in his oath take any notice of that alledged promise, tho ther was ane act of Privy Coun-

sell that feimed to mention it. (See Mitchell's tryall, in the Manuscript A., at the 7, 8, &c. of Januar 1678, folio 314, & seq.; see the full debate in his cause, Manuscript C., page 53, & seqq.; see Sir G. Mckeinzie, King's Advocat, his *Idea Eloquentiae Forensis, actione 3, pag. 78*, wher this pleading of Mitchell's is set doun; *item*, his Criminalls, cap. [29] of Perjury; as also, *Clarus, Gothofredus, Matthæus Boffius*, and other criminalists on that cryme. The Parliament's adjourning stopped the decision;) but it had the effect of Matchiavell's advise, *calumniare audacter, aliquid semper adhærebit*. Some made a mock allusion to the old history *de Haltone quodam A. Episcopo Moguntino perjuro*, who, by a false oath, beguilled Albert Earle of Bamberg, and betrayed him to the Emperor Lowis the 4^t; (see the story cited from Munster, Carion, Lonicerus, and many authors, in my 4^{to} Manuscript, marked A. 5, page 31;) the ridiculous allusion lies in the vicinity of the names. (*Vide supra*, p. 201, Eleis cont. D. Hamilton and Gellie.)

3^{to}, My Lord Bargeny presented a petition in plain Parliament, (so that it is not absolutly necessar to goe first to the Articles,) which was red ther, and referred to the Articles, bearing that the witnessses who ware to have been adduced against him in the late accusation of treason, as if he had been accessory and assistent to the rebellion at Bothuelbridge in June 1679, viz. Cunyghame of Montgrenan and his man, &c. ware suborned, corrupted, and bribed to have deponed falsely against him, to have taken away his life and fortune; and that by my Lord Halton, Sir John Dalrymple, one Crawfurd of Ardmillan, and others; (see Montgrenan's deposition besyde me.) Ardmillan, &c. denied it; so all that this accusation was like to resolve in was an a&t, or else a letter from the King, declaring Bargenie's innocence in that affair. (See more of this *infra*, page 214, num. 13 & 14.)

4^{to}, Ther was ane accusation surmised against the King's Advocat,—
1^o, For reflecting hly on the Parliament, by saying, he saw seditious Bothuel-bridge faces sitting as members of Parliament. Wheras he alledgedhe spoke only upon a supposition, if the Burrows had liberty to choise whom they please to represent them, factious and disloyal persones might prevail to get themselves elected;—but I hope, ere they entred, they behooved to take the oaths of alledgeance, supremacy, &c. 2^{do}, He was accused for

saying, at the tryall of Mr. Donald Cargil, on the 26 of July last, that "the permitting the common p eeple to read the Scriptures did more evill then good, which was a blasphemous Popish error.

5^o, Ther was ane indytment given in by Halton, and some other members of the Committee for the debateable elections, against General-Major Drummond, for accusing them of open injustice and partiality in Parliament, in imposing upon the Committee a cesse-roll, instead of a valuation-roll, for instructing one had a 40-shilling land holden of the King. The thing being thought true, the accusing him was not prosecute.

6^o, When Watherly was found by the Parliament legally elected as one of the Commissioners for Berwickshire, the Earle of Home (being peeked that his brother was rejected) offered to prove that Sir Patrick Home of Polwart had tane an engagement from Watherly, that he should be against the Act for Succession. Dalhousie urged, that in the mean time Watherly might be removed out of the House, and suspended from his vote. Others urged, since this was ane accusation of treason, to prælimit Members in such a hy point, that Home, conforme to the [49] A& of Parliament in 1587, might subscribe *in pænam talionis*, and that Polwart, *medio tempore*, might be cited before the Parliament. But the King's Advocat finding Home's information and probation was not good, it dwindled away unto nothing ; tho a man should not rashly accuse another ; and Watherly gave in a bill craving that the Earle might infist.

7^o, Ane complaint was given in by Robert Sanders and other printers, complaining of a monopoly of printing granted to ther prejudice, in favors of umquhile Andrew Anderson and his airs, for 41 years. (See ther printed answers and replyes besyde me.)

8^o, The tanners of Edinburgh, and elsewher, gave in a bill against the shoemakers, and other tradsmen who made use of leather, craving the importation of all forraigne leather might be prohibited ; and they offered to furnish the country as weell with our oun leather, dressed within ourselfes.—See the answers for the Shoemakers, besyde me, proving that the Scots leather is insufficient for many uses.

9^o, The littlers of Edinburgh gave in a petition, craving they may ather be erected in ane incorporation by themselves, or else adjoyned to some

other deaconry and trade within the toun, as the hat-makers ware lately incorporat with the walkers, that they might try and censure insufficient work. The Toune opposed this; so it was remitted, and recommended by the Parliament to the Magistrats.

No. 644, p.
213, sec. 10.

10. Some trades of the toun of Kirkcubright gave in a petition against ther Magistrats, craving the Parliament might ordain them to grant them sealls of causes, and erect them unto deaconries and incorporation. It was answered for the toun of Kirkcubright, that our laws had alwayes been jealous of deacons of trades; see A&s 77 & 85 in 1426, and A& 52 in 1555; and the Lords decision in the case of the toun of Bruntiland and ther trades in 1680. See the answers at lenth.

11. The 12 citizens of Edinburgh who ware sequestrat and made incapable, give in ane indytment against Mr. James Rochead, ther toun clerk, for leafing-making of them to the King, contrare to the A&s of Parliament, and for many other malversations; wheirof see the copie besyde me. As also, Duke Hamilton complained of the toun of Edinburgh's imposition, they had from the King, of 2 pennies on the pint of ale, as ane illegal taxation; and craved it might be declared treason in any to procure such gifts heirafter; of which see at large *alibi*. The Duke of York put a stop to both thir two grievances. *Vide infra*, page 221.

12. The Earles of Errol, Marshell, and Strathmoir complained that they ware distressed for 40,000 lbs. Scots and upwards, of cautionrie, wheirin ther predecessors ware engadged for the deceift Marquis of Argile, by bond to the toun of Edinburgh, as trusties and feoffies for Heriot's Hospitall, and that ther estates ware adjudged for it. It is true a forfaultor cuts of all unconfirmed debts; yet so pious and favorable a debt as that which is due to ane Hospitall (and such debts ought to be excepted out of all forfaultors) ought not to be cut off and defrauded by a forfaultor, wher the sone and air of the persone forfaulted is restored to the estate *per modum gratiae*; and a bond was taken from him by the King to pay such a proportion of the debts, and was *viis & modis*, when his sone married the Dutchesse of Lauderdale's daughter, gotten back; and tho stri& law ownes not creditors, yet our Parliaments have had great regard to æquity in such cases, as appears by the 3^d Act of the Parl. held in 1600,

wher waſſalls and creditors are excepted from Gourie's forſaultor ; and by the Roman law the fisk got the estates of condemned persons *cum onere debitorum ſeu aeris alieni*. Argile alledged he was content to be made liable, providing they gave him acceſſe and execution for debts he and his father had payed, whille they had the right of the Marquis of Huntlye's forſaultor for releiving that eſtate, who was restored to his fortune, without acknowledging theſſe debts. However, the Duke of York and his party ware resolved to expoſe Argile, (because he appeared much for the Protestant religion, and complyed not with them in every thing), and to reſtric& him to a locality. But it being iſſinuat that it was ane encroachment on the King's gift of reſtitution of him, to ſuffer the Parliament to clip it, the Duke of York proje&tet it might be referred to his Maſteſty ; which was accordingly done, that the honour of the justice might be the King's. They also alledged againſt Argyle, that the reſtitution was only to his father's eſtate, but that the jurisdictions and ſhireships were forgotton, and omitted to be iſſert, and ſo he had no right to them. *Vide infra*, more of him, page 225 and 226.

13. *Supra*, page 212, num. 3, we ſee it was *mordicus* contended by the Court fa&tion, that nothing could be tabled in Parliament till firſt it ware brought in to the Articles ; which ſeimes to agree with the 218 A&t of the Parliament held in 1594, and the A&t made in June 1663 : but ſee a diſcourse in my Manuscript C. page 152, *et ſeq.*, proving this is a late novation, deſtructive of the liberty and power of the Parliament ; and it is thought our Parliaments will never be free of prælimitations till that forme of the Articles now uſed be re&tified. They met ordinarily before the Parliament ſat, and cauſed the body of the Parliament, their conſtituents, attend them ane hower or two, looking one to another. It is true, they waited alſo for his Royall Hyneſſe the Commissioner, who never ap‐pointed an afternoon's meiting, but all at 10 in the morning : and ſome‐tymes they ſat till 2, 3, or 4 ; and the day the Teſt was voted, till 6 a cloake at night ; and then, by ſurprise, affairs and a&ts ware brought in upon the Parliament, paſt in Articles that morning, and very ſeldom delayed, but put to a vote that ſame dyet, that they might not have leiuſe to prepare themſelues for argueing, nor to deliberat, combine, or take

joynt measures ; which renders many of our A&ts so raw and indigested. See *alibi* of the Roman *Trinundinum* in making ther a&ts, and of the English custome in ther Parliament of reading ane act 3 severall dayes ere it passe. But this is the advantage the soverain prerogative hath got with us over the people.

14. Another point, also contingent with this, fell *incidenter* to be debate in the Parliament ; but his Royall Hynesse shewing his dislike of it, it was waved ; and it was, whither ther could be two negatives, one in the Parliament, and another in the Articles ? Sir George Lockhart contended, that his Majestie's negative he had in the Parliament, (which is not very antient with us,) was sufficient to secure his supremacy, tho he had it not in the Articles. 2^{do}, That the Articles reje&tting a Bill ought not to have such a negative as to preclude the Parliament from calling for it, if they pleise, and confidering it. But this was stifted ; and it seemes not materiall wher the King interpose his negative, whither in the Articles or Parliament, whither before reasoning or voting, or after them ; and it seemes lesse disoblidging to doe it *in initio*, before ther pulse be found.

15. Cromwell Lockhart of Lee, being one of the small Barons of Parliament, and in a long federunt desiring to goe furth, one of the maisters refused to open the door ; wheirupon Lee gave him a thrust, which the maister alledged was a stroak, and so that he had incurred the penalty of treason, by the [A&] 173 of the Parl. held in 1593, against any that beats another in the Parliament House whille the Parliament is fitting, and the King or his Commissioner present. To free himselfe of trouble and hazard, (having offended the Duke of York in his voting,) he redeemed his escape with a summe of money to the maister John Shaw.

16. The Earle of Hadinton, Lord Blantyre, and sundry other members of Parliament, who ware not upon the Articles, claimed liberty to come and sit doun besydes the Articles, and hear the reasoning and voiting, and to have a deliberative and consultative interest, though they pretended not to a decisive voice ; and this privilege was founded by them on former custome, and a clause in ane unprinted A& of Parliament in 1662, setting doun the orders of the Parliament House. They ware promised a hearing on this matter from tyme to tyme, but ware wearied

out with delay, till the Parliament was adjourned; (see this debated in other papers besyde me.)

There ware many tart and bitter refle&ctions past betwixt severall mem- No. 644, § 2.
bers, in the heat of ther debates, especially betuixt Duke Hamilton and p. 215.
the King's Advocat, and some of the barons and the borrows, which are
not to be keeped on record. I shall only adde heir some remarks¹ on
severall of the A&s of this Parliament, that ware brought in, and ather
past or rejected; referring the larger accompt to the other places above
mentioned.

1. Against the [4th] A&t of this Parliament, 1681, making Masters
ansuerable for ther Tennents, or else to remove them, it was urged by Sir
George Lockhart in the debate, that it was contrare to the justice of the
Divine law, by which the soull only that hath sinned is punished, and
never the innocent; and by the common law, *noxia caput sequitur*. It was
ansuered by Haddo and Tarbet, This engadging for tennents was no no-
velty, for it's enjoined by the 8th A&t of the Parliament held in 1528. But
that means only of the Porteous roll in Circuit Courts. See of this *alibi*
on the Privy Councell A&t to this purpose.

2. In reaſoning upon the [11th] A&t against Prote&ctions, it was desired
by Alexander Milne for Lithgow, that as long as ther was roume left to
goe and get Prote&ctions immediatly from his Majesty, or the Secretary, for
a little money, the evill would be the same, unleſſe the fountain ware stopped.
This was resented as a reſtriction on his Majesty. Then it was craved,
that theſſe Prote&ctions granted by his Majesty might be ordained to be re-
gistrat, (*vide* this *infra*, pag. 322,) that creditors might know them ere
they put themſelves to the expence of captions and meſſengers. This was
shifted, and left to his Majesty's prudence, to order it as he ſhould think
fitt. See A&t 47, Parl. 1587.

3. The A&t continueing the Excife, for fyve years after the King's
death, was desired by ſome to be annexed perpetually in all tyme coming
to the Crown, as a part of the patrimonie theirof; at leift, it might be for

¹ In addition to the "remarks" that follow, the Author afterwards inserted some others on the margins of his MS.; but these, with a number of his references to authorities, being of no general interest, are here omitted.

7 or 9 years. This was moved by Dalhouffie and the Laird of Airth ; but the Duke of York declared he fought no more but 5 years ; and the truth is, thesse burdens once set on foot never fall ; and it was thought it had been more rationall for a Parliament to have keiped this, to have gratified a new intrant successor with.

4. The King's Advocat moved the [7th] A&t for taking away the Summer Session, might containe a clause empowering his Majesty, when ever he saw cause, to bring it back again : 1^{mo}, Because it was but a returning to our antient practise, *ad principia vera* : 2^{do}, The Session being the King's court, he might order the dyets of their fitting as he pleased. It was answered, 1^{mo}, They smelld out the designe, that money might be given to some courtier to prevail with his Majesty to bring it back again : 2^{do}, The Parliaments had ordinarily taken care of settling the dyets of the Session ; and by the [2d] A&t of Parliament in 1537, the termes wheiron they sat then, ware not as now ; so a Summer Session cannot say, *state super vias antiquas*, with Jeremy. See fifteen reasons, why it was more convenient to continue a Summer Session, besyde me. Many aimed to restrict it to a moneth in summer, but a total abolition of it was carried in a hurry ; the Provest of Edinburgh being secure. Some think, tho the Parliament make ane A&t upon that which is a part of the King's prerogative, (such as the dyets of the fitting of the Session are affirmed to be,) yet the King may claime to his prerogative, and make use of the same, notwithstanding of the said A&t of Parliament, which cannot prejudge him.

5. When the A&t was making anent Religion and the Test, the Laird of Gordonston had a discourse against all p&enall and sanguinary laws in matters of religion ; that the conscience could not be forced, and that thesse severe san&ctions and penalties operated nothing, save to render men hypocrites : So that his designe seemed to resolve in a latitudinarian toleration, and forbearance of all religious persuasions, *de qua alibi*.

6. The same Gordonston, when the [13th] A&t anent declinator of Judges was passing, represented, seing a man could not sit Judge in his father or brother's cause, why shoulde on be permitted to be ane advocate, to plead ather before his father or brother ? &c. This was flatly levelled at the *Paites*, as they are called ; but not being seconded, it dyed.

7. In the A&t anent the Oaths of Advocats, &c., ther was ane omission in reschinding, fingly and nakedly, the 28th article of the regulations enjoyning the oath, and suffering the 27th article to stand, which contains the prices to which they are sworne; whereas both should have been annulled, and the prices renewed by a new statute, seing both the matter of the statute, (which is the principall,) and the oath (which is the *accessorium*,) should have been once reschinded. Yet the Advocats did all take it with that expresse quality, so long as the King and Parliament thought fit to continue it, and no longer.—Yet by the [19th] A&t of this same Parliament, the oaths of minors are declared not to be binding upon them, contrare to the 15 and 24 Psalme, and the Authentick in the Roman law, beginning thus, *sacramenta puberum, tit. c. Si adversus venditionem*; and some think nather Pope nor Parliament can dispence any with ane oath, tho our A&ts of Parliament declared the oaths of the Covenants null. (See the Differences of the Tyme, dialog. 2, page 107. See Gilbert Burnet's Conferences. *Item*, the Apologie for the Presbyterians.)

8. In the Bill given in by the Earle of Airly against Mr. John Dempster of Pitlever, craving that the Parliament might find he was not excluded by the A&t of 40 years possession, tho he had used no legall interruption within that tyme; but that he might still claime the lands of Pitlever, notwithstanding the said alledgeance of præscription, seing, during all that tyme, he was *non valens agere*; for his loyalty was excommunicat and banished, and would have nather gotten justice or redrefe if he had applyed to ther Judicatories, and cited Lauderdale's case. Sir George Lockhart and others, answered, That the great bulwark of all our properties was the grand præscription; no pin of it was to be louised. It was *sacrum non tangendum, non movendum*: that *impedimenta juris*, such as was my Lord Lauderdale's case, (his very right being extinguished by a forfaultry, or sequestration, which divested him, and stated the right in the Commonwealth, so as he could raise no action,) did indeed stop præscription, without necessity of interruption, seing all thesse years wherin the legall impediment lasted, ware deducted, and did not run; but wher it was only *impedimentum facti*, that the right of interrupting and purshueing remained with the Earle of Airly; but it was hazardous or incon-

venient (tho there could be litle in executing a summonds) to interrupt : Never lawyer esteimed that a sufficient interruption ; yet such was the power of the faction, that it was adjudged by the plurality of the Parliament a sufficient interruption. Duke Hamilton urged, it might have been made generall. The decision was so dangerous in its preparative and consequences, that it might have been the countrie's intrest, rather to have contribute the value of the plea to Airly, as to have had such a gape made in their grand security.

9. I find the [5th] A&t of Parliament, ordaining all Messengers executions of consequence to be also subscryved by the 2 witnessses, agrees with the French custome in the Code Lowis Civile, titre 2, article 2^{de}, page 10, *et seqq.* See the Law manuscript, A 7, page 6 and 7.

10. In the [14th] A&t anent Baptismes, Burialls, &c., the Bischops wifes being also designd ladies, the Noblemen took exception at it, and resolved that, to teach them humility, they would suffer ther ladies to be only called ther wives in the A&t. The nobility and barons had some discord, why the small barons should be æqualized with them, in the number of mourners. Yet Tarbet, in some passion, replyed, The Lords ought to remember, they ware all one state, and he himselfe had, under the Great Seall, a right to bury under a canopie.

The A&t of this Parliament regulating the numbers at burialls is thought to have a politicall eye, to avoid convocations and combinations of subje&ts in multitudes togither ; which Oliver Cromwel was so jealous of, that he discharged horse-races, &c. ; but he had reason to fear, being ane usurper. This A&t, when voted in Parliament, discharged any feasts at burialls, except bread and drink ; but this is keeped out of the printed A&t. Some say, the Duke of York made the A&t against pompous funeralls, in pique at the solemnity of the late Chancelor's buriall ; and that it was boasted, the Duke of Modena had not such an interment.

11. The A&t for incouradging Trade and Manufactoryes, inviting all foraigne tradsmen to come hither and set up, and they shall have the pri- viledges of naturalization, &c., omitteth the word, "Protestant" strangers, which is expressly adjected to the 7^t A&t of Parliament in 1669, to that same purpose, by my Lord Lauderdale ; and the omission was judged to be the

influence and effect of our present Governement under a Popish commisioner. It has been omitted to except in this A&t the noblemen's parliament robes and foot mantles. See the A&ts of Apparell in 1621 and and 1672, and the notes on them. Some think by the Sumptuary Act of Manufactories and Apparell, made in this Parliament, the wearer of prohibited cloaths cannot be fyned ; for all the A&t provides is only a punishment on the importers of such forbidden goods, but nothing against the wearers, after the 1 of Aprill ; only if it be not imported, it cannot be worn. Yet the A&t declares ressetters liable as weell as importers, and wearers may be called ressetters ; and farder, the said A&t expressly discharges the wearing thesse prohibited goods after the 1 of April ; yet one may alledge he knows not if it be imported, or made within the country. Yet I think tho this would defend as to cloaths, yet not as to gold lace, flouered silks, &c., for such are absolutly prohibited, tho they ware the manufa&torie of the nation. 2^{do}, It's observable, that the prohibition of wearing, is only annexed to the first classis of goods prohibited to be imported in the beginning of the said A&t, but the prohibition of wearing is not repeeted in the second rank of the goods prohibited to be imported.

12. In the [21st] A&t of Parliament, made for regulating Elections in Shires, ther ware 2 points which had been decided by the Parliament's judicative power, as votes and resolves, which yet ware omitted to be engrost in this A&t. The 1st was, wher, after a hospital acquired a 40 shilling land holden of his Majesty, the master had a vote with the other freeholders in the ele&tion of commissioners to shires, and was capable to ele&t, and be ele&t, providing they ware infest, and that they only sent one, tho they had never so many severall 40-shilling lands. The 2^d was, wher one hath only a resignation of lands made in his favors at the tyme of the chusing the commissioners and his voting ; but before the meeting and down-fitting of the Parliament, he is infest, or hes got a confirmation from the King of his base infestment, his vote is valide, tho he was not publi&ly infest the tyme of the voting. But the Parliament miserably varied in thir points, as the wind of favor or prejudice tossed them, as appears by the marginal note on the 35 A&t of Parl. in 1661.

13. The [16th] A& anent the Admiralty was judged very exorbitant. Yet Balfour, in his *Practiques*, tit. [Sea Lawis, cap. 83.] of the Admiral, and Sir George Mackeinzie, in his Criminals, page 394, seemes to assigne that court a very ample and supream jurisdiction. But the Duke of York's being Hy Admiral promoved the A&, and made the Hy Admiral in the A& anent the Test, and the additionall Act, to be omitted. The physitians ware likewayes omitted to be put in among them who are appointed to take the Test; but if they obtain what they are demanding, to be erected in a Colledge, with power of jurisdiction, then it is thought they, at leist ther rulers, will be liable to take it. As to the abuses in the Admiral court, see A& 157 in 1592, and Craig, *Feudorum* page 120.

14. The [18th] A& anent the King's cumulative Power and Jurisdiction with all his Judges and Magistrats, was looked upon as a mighty extenfion and streach towards arbitrarie governement; wheras before, the King alone could not imprison with us. *Vide supra*, page 211, num. 2. Yet Craig, *Feud.* p. 192, thinks no superior gives away his jurisdiction to his vassall privative of his oun; but the 62 A& of the Parliament, held in 1475, and the other laws ther cited, do expreſſly appoint all causes to be perſhued and determined before the Judges Ordinar; and tho the King, in points of governement, may commiffionat whom he will to take tryall of causes, but it was *inauditum* to affert it in the deciding of privat rights. That he ſhould evocat a cause from the Seffion to be cognosced by himſelfe, cannot be denied; but to delegat 3 or 4 to decide ultimativly a cause depending before the Seffion, is the unſecurity of the peopple; and this ſeimes now to juſtify the appeals, if not to the Parliament, yet to the King, the Advocats ſtood for againſt the Lords; and by the 47 A& of Parliament 1587, the King's privy writings, ſupercederes, or reſcripts, are diſcharged to be regarded by judges. . . . And by this A&, not onlie in every ſhire, (which he might doe before,) but in every brugh, he may nominat and adjoyn a lieutenant to the magistrats.—Some obſerved the word priviledge in this A&, was not ſo weell choſen for the King's prerogatiue, it importing as much as if his cumulative power ware only *privata lex*, derived from the grant of the people; but in the printed copie of the A&, this word was amended. . . . The

King may adjoin none others to the Lords of Session, by 36, 41, and following A&s of the Parliament 1537, till that A& be expressly rescinded.

15. Ther ware sundry A&s brought in, which ware rejected by the plurality of voices of the Parliament; such as, 1^o. The A& anent the weying of bear, and all other grain, and buying it by weight, as is enjoyned by A& of Privy Councell, in December 1679. 2^{do}. In the A& anent Bills of Exchange, ther was a clause that it should be lawfull for merchands to borrow or lend money at one *per cent.* in the moneth, for the quickning of trade. This was rejected, as being *centefima usura et gravissima*, being 12 in the 100 each year, and opening a door to usury. On the A& anent Bills of Exchange, it was represented, that the exchange is in place of annuel rent, and the re-exchange is for his damage and intrest, when he layes out of his money, and that he hath no other penalty but this re-exchange. 3^{to}. That inhibitions should stand even against redeemers of wadsets. (This was spoke against by Sir John Cunyghame, and never brought in again: See the A& of Sederunt anent it, dated the

day of 167 [19th Feb. 1680] years.) 4^{to}. In the [22d] A&, anent the quorum of the Criminal Court, the King's Advocate foisted in a clause, that none should judge as competent to the four pleas of the Crown, which see in *Leges Malcolmi*, and the following books, (viz. robrie, ravishing of weemen, wilfull fyre-raising, and murder,) but only the Justice Court: this being startled at, it was expunged. 5^{to}. The A& discharging the publict debts, providing the debtors take the Test, was craved it might be so cautioned, as the creditors (ere they could reap any benefit of recovering ther debts, on the debtors refusing the Test,) should be oblisched also to take it; but this motion was slighted. Some object, [to] the last clause of this A& anent the publict debts, discharging thesse that ware advanced for the King's home coming in 1650; for tho ther was reason to discharge the debtors in such bonds, yet seing the money was applyed for the King's use, it ware but reasonable the poor creditors in thesse bonds should be now payed by the Exchequer. 6^{to}. Some thought the halfe moneths cesse in favors of the University of St. Androis, was carried in the negative; but that, by false marking the votes, the Parliament was

imposed upon, and made believe it was carried in the affirmative, which certainly was a impudent boldnesse, if true.

16. The Commission for revising the Laws, A&s of Parliament, Practiques, &c., may be usefull, if it take effect, and thosse conjoyned agree, or doe not weary for want of salary to recompence ther pains.—It hes been oft on foot. See ane olden A& 54 Ja. I. in 1425, A& 115, Parliament 1487. See the *ante penult* unprinted A& of the Parliament held in 1587, and the 1st unprinted A& of the Parliament 1633. But the most ample and comprehensive of them all is the printed 47 A&t of the Parliament 1649. This is in imitation of Justinian, who employed Tribonian, and fifteen other lawyers, to review the books of law in his tyme, and who compiled from them the *Corpus Juris* we now use: tho some blame them for destroying the authors from whom they made ther collection.—Yet it cannot be denied but ther are some of our old Acts of Parliament scarce worth the reading; but in thosse dayes, the laws of other nations ware but very little more polite. See Stair's *Institutions*, tit. 1. § , pag. . See a designe of digesting the common law of England and statuts, unto a body under titles and heads, in good Latin, in imitation of the Roman law, and a bill given in to the Parliament in Edward the 6th tyme, anno 1549, as it is recorded by G. Burnet, in his 2^d part of the History of the English Reformation, pag. 96; but it took no effect.

17. The Lady Lee having exhibited a complaint against Cromvel Lockhart, hir sone, that he withheld hir joyniture and annuity from hir; and he answering that *intus habebat*, and shee was more than payed by intromission with his father's executry, to which shee had no right, and for which he had not yet compted. The Articles ordained him to advance hir 500 £ sterling, shee finding caution that if, upon the event of the plea, it ware not found due, it should be refounded. Being brought into the Parliament, D[uke] Hamilton moved, that it might be only 300 £ ster- ling, which was accordingly ordered to be so restricted by the Duke of York.

18. When the A&t imposing the assessment and taxation for 5 years longer was agitat, Duke Hamilton and others urged exceedingly to have

retention of annuel-rents, to help to pay the subsidy, or else to have had so much reik-money imposed on every chimley, which would have fallen most heavily on the brughs ; but it was rejected. As for monies bearing a part of the burden with land, see many observes *alibi*.

19. When the clerk, Mr. Alexander Gibson, was calling the rolls, and designing Sir George Gordon of Haddo, Lord Haddo, and Sir Alexander Seton, Lord Pitmedden, because so designed in the Session, and commonly at other times, Duke Hamilton took exception at it, and said they should not be so designed in Parliament, that being only due to temporall Lords ; and so therafter they ware only designed by the names and styles.

20. When sundry ratifications ware passing, the King's Advocat threatned to protest against them all in the King's name, seing he knew not how far his Majesty might be concerned therin. Argyle answered, such protestation ware to render all ther ratifications ineffectuall, seing they militated against none but the King, and they ware willing the protestation should goe in soe far as prejudged his Majesty of any part of his property. See this, *alibi*. But all the Advocat's designe was, that they might consult him, and so give him money.

21. The Royal Burrows in this Parliament, ware by the Court gulled with the hopes of getting ther priviledges restored against Brughs of Regalities and Baronies, (which ware taken away by the [5th] A& of the Parliament held in 1672,) and in hopes of it, with Isachar, they crouched under the burden, and yeilded to every demand of the Duke of York ; but when they brought in ther bill to the Articles, they ware so far from getting redresse, or the Regalities and Barronies declared lyable to bear a part of the burden with them, that the Articles ware like to take more away from them. So the Burrows ware glad to put up ther pipes, and hold them as they ware, besyde the skayth they had got by limiting them to elect non but one of ther ounе toune ; by the act of Manufactories and Trade oblidging them to sell off all their wair betuixt and the 1st of April ; by the act of Registrations of ther Seasines ; and particularly by the a& anent the salt, tho the salt-masters made them a fair offer, that if the Royall Burrows would not bring it home at that price, they would doe it, and oblige themselves to keip publi& granaries in convenient places, to

serve all the kingdome ; as also the Admirality Act, the assesments to the King, and to the University of St. Androis ; the want of the Summer Session to some brughs, and the discharging the publi& debts ;— all thir ware the rewards the Burrows got for ther cheap service to the Court.

22. It was urged, that the A&t of Assassination might explain what it was ; but not being able to agree upon that, it was left in the generall termes, and said, that it needed no specifick definition ; but lawyers knew weell eneugh the bounds and nature of it, and the Criminal Judges might apply it as the cases occurred. But this opened a door to great arbitrariness, to find that to be assassination which is not.

23. The Toune of Edinburgh delt to have got ther A&t of Counsell, determining the duration of a Provest only to tuo years, (being afraid Sir Andrew Ramsay might come in upon them,) ratified in Parliament ; but Halton stopped it. 2^{do}. They ratified their A&t they have for their water, and the springs and ground thro which the pipes run, and that none presume to stop or interrupt them in cleansing them, or to cut or break them. *Item*, 3^{to}, They obtaine ane A&t, that all their thatche houses in the fore-street, be within a year taken doune and covered with flait, both for decoration and to defend better against fyre. They neided no A&t for this, because the [26th] A&t of Parliament in 1621, provides that already ; however, fundry other brughs, such as Lithgow, Glasgow, &c., craved it might also be extended to them, which was granted. 4^o, They omitted, throw forgetfulness, to get a ratification of ther A&t they have for building only with stome. 5^o, They obtaine ane A&t anent Thomas Moodie's legacy and mortification to them of 20,000 mks, that in regard they have no use for a church, (which was the end wherto he destinated it,) that therfor they might be allowed to convert it to some other publi& work. The Articles and Parliament recommended the Toune to the Privy Counsell, to see the will of the defunct fulfilled as near as could be ; for it comes near to sacrilege to invert a pious donation. The Toune offers to buy with it a pale of bells, to hang in S^t. Geill's steiple, to ring musically, and warne us to the church, and to build a tolbuith above the West Port of Edinburgh, and to put Thomas Moodie's name and armes theiron. Some

thought it better to make it a stipend to the Lady Yester's Kirk, or to a minister for all the prisoners, to preach at the Cannogat and Edinburgh tolbuiths, and the Correction-house, Sunday about. 6^{to}, The Earle of Erroll past a ratification of his office of Hy Constabulary, against which the toun of Edinburgh forgot to take a protest; and by vertue therof, he and his deputes pretend they have right stll to judge criminally within the town, tho the Parliament be now adjourned for five moneths and a halfe. I think, in short adjournements, his jurisdiction continues, but where a Sessiion of Parliament is closed by ane A& *salvo jure*, and ane A& of adjournement, his right during that recess and intervall certainly sleeps, especially when the Imperial Honors are also put in the Castle.

24. Ther ware many ratifications, A&s for impositions on bridges, for repairing them: *Item*, A&s for changing hywayes, and referring Hope-ton's bill for that effect to the Privy Counsell, seing he had not the consent of the adjacent heritors besyde Kirkliston. *Item*, Many warrands for fairs and mercats; but in regard some craved 4 fairs in the year, they ware all reduced and restricted to 2, becaufe they commonly doe cast all the country people louse and idle. Thir ratifications afforded the Lord Register a good summe of money, for the price sett on them was 5 tb. sterlinc.

25. Ther was ane A& brought in to the Articles, at the mediation of the Wryters to the Signet, for taking away the new A& of Adjudications introduced in 1672, and bringing back the forme and practise of comprisings again. This was opposed by the President of the Sessiion: 1^{mo}, Because he was author of the said A& of Adjudications: 2^{do}, His sone, being a clerk of Sessiion, had much benefit by thesse adjudications. See a paper against them. By the proroguing the Parliament this motion ceassed.

There was also a proposall and overture made to this Parliament, anent the minut books of hornings, inhibitions, infestments, &c., that they shoulde be printed, and publickly sold, and be authentick, that a man for 12 pence might know, from year to year, what incumbrances any lands or estate ware under; and if they ware not to be found in that minute, then they ware not to make faith. But this propaling, denuding, and discovering

too much the weaknes of the nobility and some of the gentrie's estates, was found inconvenient.

26. Besydes the Acts that past in this Parliament, or ware tabled in the Articles, ther ware sundry other proposalls, whispered as designed to be past in A&ts. Such as, 1°. The reschinding the Coronation Oath ; which is, upon the matter, done by the Act of Succession, wheir the nixt air succeids immediatly without necessity of ever seeking to be crowned. 2^{do}. A toleration and connivence at the exercise of Popery ;—they have not yet pulled of the mask to demand this. 3^{ro}. To renew ane act against duells. 4^o. That the death of creditors, appryfers of waird lands, within the legall, shall not make the casualties of waird and marriage to fall to the superiour, but only the death of the wassall debtor, from whom it was appryfed or adjudged, so long as the legall runs. (See this case, *supra*, page 131, Yeoman.) 5^o. To impower the King, and his Privy Councell, hereafter, upon emergents, to raise and impose money without a Parliament ; which ware for the Parliament to resigne all ther priviledges, *ad perpetuam remanentiam* ; and after such ane a&t ther neided never another Parliament ; and no Parliament could doe this without the speciall commision of ther constituents to that effe&t. 6^o. That the King might conjoyne the Duke of York, his brother, in the governement with him, and assume him sharer in the kingdome, as Queen Mary demitted hir croun to hir sone James, and the Roman Cæsars and Emperors ware commonly tuo at once. (See Scuderie's *Politique des Rois*, in the discourse of Dom. Ramir to his estates, advancing his brother partager of the crown with himselfe ; it's page 223, *et seq.*) 7^o. To complain of severall oppressive gifts and monopolies, and particularly of Mr. Fountaine's gift as Master of the Revells, by which he exa&ts so much of every bouling-grean, kyle-alley, &c., throw the kingdome, as falling under his gift of lotteries. 8^o. To allow appeals from the Seffion to the Parliament. Yet some think our civill rights and intrefts as weell and safely lodged in the Seffion then in a Parliament, who judge more with a biaffe, and in a hurry, and with lesse regard to law, then the Lords of Seffion doe : and indeed, I see Parliaments are very dangerous, where legall privat rights are questioned by courtiers who have favour.

27. In this Parliament, the Chancellor being deceasfed, the Marquis of Athol, Lord Privy Seall, being the nixt officer of state, did, by his Royall Hynesfe order officiat as President of the Parliament; but nather he nor his Royall Hynesfe took much upon them to moderat in the debates. The great champions and Hectors, who managed the debate on the Duke of York's syde, during all this Parliament, ware the King's Advocat, the Tresurer-depute, Haddo, and Tarbet, who boated with them some dayes after its beginning. Some wise men observed, that the Duke of York might have honestie, justice, and courage eneugh, and his Father's peremptoriness, but that he had nather great conduct, nor a deep reach in affairs, but was a filly man.

28. There ware about 20 fitting dayes of this Parliament; and it was adjourned on the 17 of September 1681, to meit again the 1 of March 1682; but some think it will be easier work for them to call a new Parliament, seing the 2 prælimitations they have by this Parliament put upon all ele&tions, (the one in Burrows only to choise inhabitants, the other in shires and Burrows, that the ele&tors must first take the Test,) will have that influence in all subsequent Parliaments, they will get ele&tet whomever the Court pleases to recommend, in most Shires and Burrows, manie being thus debarred from ele&tions. But even in this Parliament, the omnipotent vote, like Alexander's sword, cutted the Gordian knot; the Court being at leift 30 or 40 votes superior to the other, of which see ane accomp^t *alibi*; and ere it was halfe understood, or debate, ther ware the Earles of Airly, Dalhouffie, &c., who cryed alwayes for a vote; tho Duke Hamilton oft re&tified the state of the vote, when it was wrong.

During thir 6 or 7 weeks of the Parliament's fitting, ther ware few or
no Privy Counsells held.

No. 645, p.
221.

1. I remember ther was a contentious debate in August 1681, at counsell between Dunbar of Grange and the Laird of Tanachy, anent a depredation. The Counsell modified Tanachy to pay 1000lb. Scots of damage.

2. Item, a ryot pershued by Mr. William Whyte, minister of Marie-couter against the Laird of Pitfoddells, &c.

3. After the Parliament rose, the Privy Councell for some dayes met frequently, viz. 20th, 22d, 23d, and 24th of September, 1681, on which dayes the wholle Members and Privy Counsellors present, ther clerks and servants, such as Hew Stevinson, and George Rae, take the Test, and fwear it, word by word, upon ther knees ; and emit a Proclamation, ordaining all Courts of Judicatories to take it so soon as they fit ;¹ which some condemned as a great streach in the Counsell, to attempt to abridge and shorten the tyme granted by the a&t of Parliament it selfe for taking of it, viz. the 1st of Januar nixt. It was also sent up by the Counsell to the Earle of Murray as Secretary, and to Mr. Andrew Foster, his servant ; and to the Duke of Lauderdale, and to the Duke of Monmouth, as a Privy Counsellor, and Shireff of Roxburgh or Tivedale : and tho the King's sones be excepted from this Test, yet that most be only meant of the King's lawfull sones ; tho the word " lawfull" be omitted to be adde&ed to the word " sones," but it is to be repeited from the præceeding words " lawfull brothers ;" so this will be a great test of his illegitimity if he take it.

4. The incapacity standing upon the 12 citizens of Edinburgh by a former letter of the King's, (*de quo supra*, page 213,) is this day taken of, or rather declared and applyed ; for the King's indemnity, in July 1679, discharged them in it's generall comprehensive words ; and accordingly, Thomas Robertson, Charles Murray, and others of them, ware brought in unto offices within the Toun at the following Michelmasse election of the Magistrates of Edinburgh.

5. The Privy Counsell repones George Earle of Caitness against John Earle of Bray[d] Alban, Lord Holland, &c., to the posseſſion of a peice of land alledged taken from him by the last Earle of Caitness, when he acted as protutor to the said George, tho Glenurchy now Bray'd-Alban be only a fingular successor to that last Earle, yet a tutor cannot *ante redditas rationes* affigne ; the Counsell reserved the point of right to be discusſed before

¹ At this tyme also the standing forces, even to the common souldiers, took the oath of the test in Leith-Links.

the judge ordinar. Bray[d]alban urged Earl George might find caution to remove if he succumbed before the session, he being insolvent, or else continue his possession, and he would find Earl George sufficient caution, but this offer was not regarded.

6^{to}. The merchands chopkeepers in Edinburgh gave in a patent to the Privy Counsell, craving they might be erected in a Company and Society, with a guild-hall, &c., (see the double of it besyde me,) and defired the Counsell would recommend it to his Majesty. The merchands adventures first opposed it ; but being taken in unto the gift, they defisted. The trades contradic^ted it ; but, whoverer, it was recommended. This the merchands of Edinburgh had oft essayed in former tymes, but could never carry it till now. The Duke of York is a great freind to all such deaignes of companies. (*Vide infra*, page 229.)

7^o. Some of the Phyſitians of Edinburgh gave in at this same tyme to the Privy Councell a patent, craving to be erected in a Colledge of Phyſitians, to have power within Edinburgh and the 3 Lothians, to examine all intrants, and hinder any to pra&tise without ther licence ; and to search apothecaries drogues if they be wholesome, &c. (*Vide supra*, page 217, num. 13.) This was opposed by the Chirurgian apothecaries, by the Magistrats of Edinburgh, the Universities, the Shireffs, and inhabitants within the 3 Lothians, &c. So the recommendation of it to the King was delayed by the Counsell, (tho ther committee had given ther opinion in the Phyſitians behalfe) till November nixt.

In the Laws of our Kings, which I have in the end of my Balfour's Pra&tiques, I find one of King Reutha, long before Christ's birth, ordaining mediciners to be tryed and examined if they be expert, before they affsume to pra&tise ; and in the dividing the prey it gives [two ribs of the fide] to the phyſitian, [and as much] to the surgeon, and the tongue to the advocat. King Josina, who reigned some tyme after him, was a great encourager of phyſitians, as appears by Boetius, Buchanan, &c. See anent this Colledge of Phyſitians the wryts and informations besyde me. *Item*, the patent of the English Colledge at London, erected by Henry the 8^o, and ratified by the [5th] A&t of the Parliament held anno 13 and 14 [14 and 15] of his reigne, and the other English statutes relating theirto. (See

E. Chamberlaine's Present state of England, part page anent this Colledge. See *infra*, page 228.)

8^{vo}. George Gibson, brother to the Laird of Dury, obtains a warrand from the Privy Counsell for printing the Decisions obserued by his grandfather, commonly called Durie's Pra&ctiques, with the alphabeticall compend theirof, and prohibiting any others for such a terme of years to doe it. So he expe&ts the printers will offer him money for it.

9^{mo}. The Earle of Haddington, as having married the Duke of Rotheffes eldest daughter, gave in a petition to the Privy Counsell, craving they would ordaine the charter kist and wryts, in the hands of Mr. John Bayne of Pitcairleye's relict and others, might be delivered up to him. The Lord Lundores, as the Chancelor's neareft air-maill, opposed it; but on fight of the tailzie, wher Lundors is very remote, he was found to have no intrest.

10^{mo}. The Councell also quæstioned Hadinton anent the right to the shri-valty or shirefship of Fyffe, if it was hæretable? He answered, he was so informed, but he had not yet got inspe&tion of the wryts. The designe was, that ather he *jure mariti*, or some other, moft take the Test, seing they could not put it to the Ladie.

No. 646, *Primo Octobris* 1681.—Collonel Gage, commander of a regiment for p. 222. the King of Spain in Flanders, called the Duke of York's regiment, having desired from the Duke some of thosse prisoners upon the account of ther religion and phanaticisme, to be sent away with him as souldiers, to fill up his number: the Duke called a counsell for that effect, and 6 of them, viz. Forman, Garnock, Lapsley, Stewart, Fairrie, and Russell, the moft of them young fellows, ware brought with a purpose to sentence them to be delivered to him, but they did fo misbehave in declining the King, Duke of York, and Counsell, and speaking fuch nottorious treason, that it altered the Counsell's mind, and instead of fending them away, they ordained the wholle to be pannelled at the Criminal Court for treason; *de quo vide infra*, the 7 of October, *pagina sequente*.

No. 647, *4 Octobris* 1681.—This day was the election of the Magistrats of p. 222.

Edinburgh, wher, by appointment of the Privy Counsell, ware present my Lord Halton and the Bisshop of Edinburgh, to see them take the new Test; and ther number of 38 electors not being compleat, they could get none of the citizens persuaded to come in and supply the roome of the absents, or to officiat *pro hac vice solummodo*, unlesse they ware dispensed with the Test, they being no farder concerned but to give ther fingle vote; wherupon, thesse Lords Assesfors dispensed theirwith as to them, because it was only to be tane by the elected, and not by the electors, this year, feing the 40 dayes since its promulgation ware not yet exppired. Some thought they took more upon them than the wholle Privy Counsell could doe, to exeime any voters from taking the said Test; and that all their security and warrandice could not defend the voters from incurring the losse of ther escheat, if they ware quæstioned theiron.

6 *Octobris* 1681.—At Privy Counsell, the Laird of Hopeton having a No. 648,
bill in for changing his hyway, (*de quo supra*, page 219,) the Counsell took p. 222.
occasion to call him to take the Test, as Shireff of Lithgow, or West Lou-
thian; and upon his tergiversation and refusall, vindicating his loyalty to
the King, the Counsell, by ther sentence, declared that he had lost his right
to that shireffship during his life, (it being hæretable) and the supplying of
the vacancy belonged to the King.

2^d. The proceesse betwixt Meldrum and Philiphauch, (*de quo supra*, page
210,) being this day advised, the Counsell fand Philiphauch had mal-
versed, and been remisse in punishing conventiculars, &c.; and therfor
they fimplie deprived him of his right of shireffship of Selkirk, (it not being
hæretable, but bought by King Charles from his father,) and declared it
was devolved in the King's hands, to give it to any other. Some faid,
feing the Dutcheffe of Lauderdale's courtship, by which he had stood, was
now dryed up, he came weell of that he was not likewayes fyned.

7 *Octobris* 1681.—At Criminal Court, the 6 persons mentioned in No. 649,
the preceeding page ware pannelled for Treason, on ther declarations they p. 223.
had made before the Privy Counsell on the 1 of October last. The King's
Advocat being in Angus, sent over a deputation to me to pershue, as his

substitute, in that cause ; but God so ordered it that I was fred, and Sir William Purves eased me of the office. In fortification of what they had said before the Duke and the Counsell, they led the Clerks and Maisters of Councell witnessses, who deponed, that upon the matter they uttered thesse or other such like words : “ They declined the King, and denied him to be ther lawfull sovereigne ; and called him a tyrant and covenant-breaker.” And Forman had a knife with this posie and inscription graven on it : “ This is to cut the throats of Tyrants ;” and said, “ If the King be a tyrant, why not also to cut his throat, and if they were righteous Judges they would have the same on their swords, like Buchanan’s motto, borrowed from the great Emperor Trajan, *pro me ; fin mereor, in me.*” Garnock having, at a Committee of Counsell, railed on Generall Dalzeel, calling him a Muscovia beast, who used to roast men, the Generall in a passion struck him with the pommel of his shable on the face till the blood sprung. This Marnock [Garnock] gave in a testimony and protestation, all written and subscryved with his hand, calling them all bloody murderers and papists ; and charging all the Parliamentars (as he termed them) quickly to reverse and disannull ther wicked laws they had made, and that Popish Test they had been taking, and to put away that sinfull man, (this was the Duke of York,) or else the judgements of God ware ready to break upon the land. Lapsley was wiser then the other 5 ; for he owned the King, in so far as he owned the Covenant, which he swore at his corona-tion in Scoon, and would nather goe back nor forward, nor say any more ; so they not being able to reach his life, the dyet was deserted against him, and he sent back to the thieffs hole to be fettered again ; but whille they ware on the pannel the bolts ware tane of them, so *non dicebant causam ex vinculis.* Before the inclosing the Affise, they gave in another paper, subscryved with all ther hands, charging ther blood on the Judges, and summoning them to answer at God’s tribunal, and reflecting on ther unjust and barbarous dealing with Mitchel, Mefrs. John Kid and King ; (and alledging Mr. John Eleis, for pershueing them, dyed with horrors ;) and in killing James Lermont only for being present at a feild conventicle, wher a man was killed, &c. Thir 5 ware found guilty by the Jury, and condemned to be hanged in the Gallowlee betwen Leith and Edinburgh,

on the 10 of October; ther heads to be struck of, and set up on pricks upon the Pleasants port of Edinburgh; and Forman's hand (who had the forsaide knife,) to be cut of alive: All which was accordingly done; and they dyed obstinately, without acknowledging any fault, or retracting ther errors, or allowing ministters to pray for them; but reviling and condemning ther judges, and all that differed from them. Ther bodies ware stollen up by some of their partie from under the gibbet, and reburied in the West church-yaird.

11 Octobris 1681.—The Duke of York called a counsell extraordinar, No. 650,
to send away 4 more of thesse unhappy peeple of so deluded principles,
p. 223.
with Collonel Gage, to Flanders. When they ware brought in, they began in that same very strain and dialect with their neihbours who ware but hanged the day before; but the Duke caused hastily remove them, that they might not also hang themselves with their oun tongue.

2^{do}. This Counsell day, ther ware 6 houses named for putting garrisons into in the Westren shires, viz, the Castle of Evandale in Strathaven; the house of Freuch, lately forfaulted—belonging to the Earle of Loudon; the house of Earleston, also forfaulted, &c.

Eodem, 11 & 12 Octobris 1681.—The Synod of Edinburgh having met No. 651,
thir dayes, and the Bisshop propofing the Test to them, and finding p. 224.
them unclear, desifted at this time; wheiron they scrupled to continue the meeting, leift they might incurre the certification of the A& by ther sitting and not taking it; but he declared they should be in no hazard upon that account.

WINTER SESSION, 1681.

Primo Novembris 1681.—This day ther was a new commission for the No. 652,
Seffion from his Majesty produced and read, wherin President Stairs, p. 225.
Glendoick, Clerk Register, Newbyth, all Ordinary Lords, and Argile, an Extraordinar, ware left out and discarded; and in their roumes Haddo

Tarbet, Boyne, Drumcairne, and Queansberry, ware brought in. They took the oath of the Test this day, and intimated to the advocats, and other members of the Colledge of Justice, to compear, and likewayes take that oath; which was accordingly obeyed by many.—Anent the ftrange singularities of this new commiffion, and of the severall fteps and degrees in the taking of this Test, fee large and full remarques in my 8vo. manuscript of the Seffion occurrents, at the 1 of November 1681, from page 47 till page 65, by the space of eighteen pages, wher this great revolution and its causes are searched into.

No. 653, 3 & 4 Novembris 1681.—At Privy Counsell Sir Patrick Hepburne p. 225. of Black-castle, is fynd in 200lb sterlinc, because on Mr. Gabriel Semple, alias Lauder, because his mother's name, ane intercommuned fugitive Presbyterian minister, was refest at his house in Auldhamstocks; tho Sir Patrick was not ther himselfe, and the said minister was his coufin, and came thither sick, which might all serve to alleviat; yet he was decerned to pay the faid fyne within 6 dayes.

2^{do}. One Patrick Burre, a drummer, being strugling in a quarrell with some fleschers, he discharges a musket on them, and instead of them he killed a woman accidentally standing by, and who was great with child, and so both shee and the child dyed. He alledges the gun went of casuallly, and he did not defigne to shoot it; for law is clear, if he defigned to shoot it at the fleschers, tho he kill another in *rixa*, and not him whom he intended to kill, yet it is *homicidium praemeditatum in genere*, tho not *quoad* the person killed, and so is punisheable. The generall and his officers intending to judge him by martiall law, and the woman's husband and freinds fearing they might absolve him, applyed to the Privy Counfel, and got it remitted by them to be tryed by the Criminal Lords of the Justicarie, it being *delictum commune*, and not *proprie militare*. Likeas they ware the first attachers, which rule of prevention is obserued with us, but not in England, wher fojors are judged by common law.

3^{do}. A letter is sent from the King, mentioning a former, appointing, in absence of the Chancelor, the Privy Seall to praefide in Secret Counfell, and in his absence my Lord Halton; but now allows the Counfell in such

a case to choice ther President out of ther oun number, which seemes to have been procured as ane affront to Halton.

4^{to}. The Earle of Argile being called for to take the Test, as one of the Commissioners of the Treasurie, he did swear it, but with this explanation, (which he openly declared) that he conceaved this Test did not bind him up nor hinder him from endevoring alterations to the better, ather in church or state. (*Vide infra*, more of this, page 233.) This insinuation, *quoad* the State, if expounded of the monarchie or succession, seemes dangerous. (*Vide supra* of Argile, pages 213 and 214.) This was not noticed that night, but the nixt day his ennemis represents this as a seditious explanation to the Duke of York, and prevails with him to call a counsell, whither Argile is sent for, and he is required to swear the Test simply, without any quality. He refuses, and adhaeres, and gives it in in wryte. The Counsell, on this, holds him as a refuser of the Test, and declares all his places void. He, with great magnanimity, firmenes, and constancie of spirit, answered, seing he could not serve his Majestie and the Royall Family any more in his counsells within doors, he should never be wanting to doe them all the service in his power without doors.—It was observed they chused the Marquis of Montrose praeses in counsell this day, of purpose to pique Argile, on the old discord betuixt Argile's father and Montrose's grandfather. (Of ther quarrel against Argile, see the forsaid 8vo. Session manuscript, page 47, *et sequentibus*. See Argile's explanation, with the Bischops, the synod of Aberdeen, and my oun, in my manuscript of Session occurrents, marked J. page 59, *et sequentibus*. *Vide infra* this page.)

5^o. *Eodem tempore*. Ther came doune a commission from his Majestie to examine the accompts of the Treasurie, how the King's publi& money hath been spent and employed thesse several years bygane. This was principally levelled against Halton, tresurer-depute, because the most of thosse who ware named auditors to thir counts ware none of his freinds.

7 Novembris 1681.—At the Criminal Court, Mr. Robert Martin, clerk, No. 654, having delayed and shifted to take the Test, Mr. Thomas Skeen, advocat,^{p. 226.} was installed by the Justice-Clerk to officiat in his roume.

2^{do}. Riddell, Proveft of Rutherglen, is pershued by David Spence, clerk ther, for accession to the late rebellion at Bothuel Bridge. The Affife returned him guilty only of this one expreffion, “ They are our ounе lads,” (for he had a fone and a nephew ther,) “ we moft not let them want;” fo meat was furnished them. Thir words ware judged ane approbation, however naturall affection may alleviat. The Justices delayed to give sentence against him till the 14 of November.

3^o. One James Sinclar is pershued for ravifhing a woman. The witness(es) being adduced, it appeared that ſhee concurred as voluntarily as he, except one woman whom ſhee had corrupted, who deponed ſhee hard hir cry in a ſtrugling, “ You ſhall never get your will of me.” The Inqueſt clenged him, and ſhee was impriſoned for her impudence. It ſeemes rapt does not preſcribe with us within 24 howers, as the tent chapter of the 4^t book of *Regiam Majeſtatem* inſinuatſ.

No. 655, 8 Novembris 1681.—At Privy Counſell ther is ane order paſt, *nemine p. 226. contradicente*, for ſecuring and committing the Earle of Argile in the Castle of Edinburgh, and commanding him to enter his person ther betuixt and the nixt day at 12 a cloak; and that because the King’s Advocat, Tarbet, and others affirmed, he by the written explanation he offered on the Test, had miſconſtruēd the King’s laws, and ſtudied to ſow ſedition and leafings betuuen the King and his peopple, (*vide* the beginning of this page,) and ſo had incurred the pains of the 107 A&t of the Parl. held in 1427, and of the 10 A&t in 1585, for depraving and miſconſtruing the King’s laws, or raifing jealouſies and diſcord betuuen the King and his peopple, which is diſſerent ſomewhat from leafing-making, and is declared puniſhable by the ſaid laſt A&t with death.

No. 656, 10 Novembris 1681.—At Privy Counſell, Cunyghame, Proveft of Air, p. 228. (having voted againſt the Duke of York in the laſt Parliament,) is perſhued for joyning with the late Rebells in 1678, in ſo far as ſome 7 or 800 of them, came with Mr. John Welsh, minister, to the ſaid toune, he being Proveft, and took up ther quarters ther all night, and with whom he ſo far concurred, as he gave them billets, affigning them ther particular lodg-

ings. The defences ware, 1^o. The A&t of Indemnity in July 1679 ; which was repelled as not extending to Heritors, as the Proveft was. 2^{do}. That what he did was not voluntarily, but extorted *vi majore*, to keep the toun from being robbed and pillaged, which was a good office, and he was not able to resist or detain so great a number, which in all cases ought to excuse. (See the A&t 13 and 14 Parliament 1551, and the marginal notes their ; and Sir G. Mackenzie's English Pleadings, 15 plead. page 174, wher it appears that compliance with ane ennemy, wher we have not power sufficient to resist them, is no cryme.) However, the Counsell fand the libell relevant against him.

Eodem die.—The same brugh of Air, *item*, the touns of Coupar in Fyffe, and Queansferry, are pershued, either for not electing ther Magistrats at ther usuall tyme of Michaelmasse laft, or else for ther Magistrats not taking of the Test. The Counsell declared the laft tuo brughs had loft ther privilege of choifing this year, and therfor the election had fallen and devolved in the King's hands, and he and his Counsell would name ther Magistrats.

11 Novembris 1681.—In the Seffion ther was but flow procedure as No. 657, yet, throu the demurr and interruption Advocats and Agents made in ^{p. 227.} taking the Test enjoyned by the late A&t of Parliament.¹

17 Novembris 1681.—At Privy Counsell, the Physitians' patent of erec- No. 660, tion in a Colledge was recommended to his Majesty, to be past his Royall ^{p. 228.} hand, but with great reservations in favors of the Toune of Edinburgh, of the Universities, and Chirurgeans ther priviledges. (See more, *supra pag.* 221 *et sequente*; see the double of this patent *alibi*; *vide supra pagina* 226, Chirurgians and Apothecaries.)

2^{do}. Alexander Lindsay, George Wedderburne, John Cairnes, and others, who had a gift from the C[lerk] Register of printing the A&ts of Parliament, gave in a complaint against Andrew Andersone's reli&t,

¹ [This sentence in the MS. forms a parenthesis, in connexion with a case before the Court, as reported in Fountainhall's Decisions, vol. i., p. 161.]

called Agnes Campbell, and Patrick Tailzfer, hir present husband, that they attempted to reprint the A&ts of Parliament lately made. Alledged, hir husband and sone ware, by gift in 1671, the King's printers, and nothing could be the more proper obje&t of ther employment then to print the King's laws. Yet the Privy Counsell discharged hir to medle therwith, and ordained the copies already printed to be given up by hir, and to be brunt ; and certified hir, if she contraveened heirafter, shée should be fyned.

3^{to}. William Cunyghame, Provest of Air, (*de quo supra page 226,*) is sentenced, viz. sent to prison in the Tolbuith of Edinburgh, and fyned in 200 lb. sterling, and ordained to ly in prison, not only till his fyne be payed, but likewayes during the Counsell's pleasure ; and referred him to be per-
shued in the Criminall Court, for treasonable complying with Welsch and the Rebels, in quartering and billeting them ; as also for forgerie, in returning a report to the Counsell, that the Magistrats of Air had taken the Declaration at ther ele&tion, and entry to ther office, wheras they took it not for some moneths after. But the reason of that was, because some of them ware abroad when choisen, and as soon as they came home, they took it ; and yet all ther subscriptions boor one date, as if they had signed it on the day of ther ele&tion.

4^{to}. The Bisshop of Edinburgh having proffered the Test to his Mi-
nisters, and some of them having refused it, he made a report of it this day to the Duke and the Counsell ; wheirupon the Counsell called for the Ma-
gistrats of Edinburgh, and intimat to the Provest, that they had declared the places of thir 4 Ministers void, viz. Meldrum, Kinneir, Wilkie, and Kay in Leith : (This was ane instance and pra&ise in the King's suprem-
acy in ecclesiasticks over churchmen, wheras, properly, they should be only deprived by ther oun peers, or the Bisshop) ; and ordained the Toune to fill ther places immediatly. This was done to terrify the rest ; and tho the Magistrats too hastily filled some of ther places, yet the Ministers had till the 1 of Januar to deliberat, by the A&t of Parlia-
ment, anent the Test ; and the Toune Counsell of Edinburgh, as patrons, had 6 moneths by the law of the Kingdome, to present *in vice*.—By the *jus devolutum* they could be deprived of that *vice* of presenting.

18 Novembris 1681.—At Exchequer, the Merchants of Edinburgh's No. 663, patent of erection in a Company, being past by his Majesty, and returned ^{p. 229.} doune, was this day likewayes past in Exchequer ; but clogged with a reservation of the rights and priviledges of the Trades of Edinburgh, that it should be without prejudice therof, (*vide supra* page 221.) It was surmised that the Directors of this Company ought to take the Test.

2^{da}. The Exchequer gave Sir Alexander Bruce of Broomhal a protection for a moneth to clear his compts with them ; and after serious reading of the late A&t of Parliament in 1681, stri&ly dischargeing Prote&tons, yet they judged themselves authorized to grant one in this case.

22 Novembris 1681.—At Privy Counsell, his Majesties Letter approving ^{No. 665,} _{p. 229.} of ther explanation of the Test was red. See both printed.

2^{do}. Ther was a Letter from the King, approving and ratifying all ther procedure against Argile, and ordaining them to proceed against him according to law ; but not to sentence, till he be acquainted, and the wholle referred to him.

3^{do}. Mr. Andrew Lumsdean, minister at Dudingston, is accused for having preached against the Test, in so far as he, speaking of the tymes, did say, “ Instead of bread, stones ware given us, which gravelled and broke our teeth ; and instead of fisches, serpents ware offered to sting and poison us, which nather we nor our posterities would get digested ;” and on this he cited that of the prophet ; “ We looked for peace, and behold trouble :” all which they applyed to the Test. His meaning was referred to his oath. He deponed, tho, by tendernesse of conscience, he was unclear to fwear the Test, yet he purged himselfe of any designe of refle&ting on it ; but his text from John led him naturally in to regrait the division, schisme, and rent is in the Church ; and all the former expreſſions tended only to that purpose. He was affoilized ; tho he, as a young man, was staged designedly, to fright others.—Yet this way of purgation of ther meanings was looked on as singular, called by lawyers *juramentum purgationis.*

Eodem tempore.—Joseph Broun and James Clerk having poinded the No. 666, _{p. 230.}

Earle of Argile's cabinet, furth of the Cunzie-house in Edinburgh, for a debt owing to them by the Earle's bond, and the said cabinet being rescued from them by violence, they gave in a bill of complaint to the Privy Counsell of the ryotous deforcement. The first defence that was proponed was, that the Cunzie-house being in law a sanctuary, no legall poindings or distrinzeings could be used ther. It was answered, 1^o It was not knownen whether it was by law or usurpation that the Cunzie-house clamed the priviledge of ane asyle, refuge, and sanctuarie. At the most, it could protect and defend none but the persones of the servants who ware immediatly imployed ther to work in the service of the King and kingdome, or to impede their tools or instruments from being poinded, they deserving as great a priviledge as pleuch graith hes; but it was *inauditum* and unreasonable to extend this to defend extraneous persons running in ther to avoid captions, much lesse to secure the goods and plenishing of strangers; for if this ware once allowed, then the Abbey, the Cunzie-house, and such other places as pretend to be sanctuaries, should refett the goods, wair, and furniture of all dyvors, so that creditors should not reach it, which is absurd. They, fearing the event of this, alledged, that the wright who made it retained it *jure tacite hypothecæ*, (which he hes not if it be once delivered, for then *fidem sequitur emptoris*,) till he was payed for the price of it. (Anent the priviledges of sanctuaries, *vide supra*.)

No. 668, 24 Novembris 1681.—At Privy Counsell, ane order¹ was made that such
p. 230. Royall Burrows as had not elected ther Magistrats at this last Michelmasse because of the Test, that they should be charged with horning to elect betwixt and the day of , under the pain of being denounced rebels if they disobeyed, and such as had ele&ted that the Magistrats so chosen should be charged to embrace and accept under the same pain. *Item*, one Mr. Welsh, Minister at is staged for preaching against the Test, and is put to purge himselfe. (See Mr. Andrew Lumsdean's case in the forgoing page.)

¹ See my folio collection of Craigie's Practiques *in fine*, folio 41 *et seq.* wher ther are Acts of Counsell like this.

29 *Novembris* 1681.—At Privy Counsell, a woman is secured for forg- No. 671, § 2,
ing and making of false coine. p. 232.

12 and 13 *Decembris* 1681.—Thir 2 dayes ware taken up with the Earle No. 679,
of Argile's Proces at the Criminall Court, wher the libell is found rele- p. 233.
vant by the Justiciars to infer treason ; and it being proven he gave in
that explanation which they fand treasonable,¹ the Affise could not (being
so determined by the Interlocutor,) but find him guilty of treason and
leaving-making ; but affoilzied him from the article of the perjurie. (See
his indytment and defences besyde me, as also many observes on this od
and severe usage in my Historick folio manuscript, page 27, and in a 4^{to}
one, and in many other places.)

Ther was a great outcry against the Criminal Judges ther timorous
dishonesty. The Marquis of Montrose was Chancelor of his Affise. Sir
George Lockhart called it lucrative treason, to the advantage of Church
and State ; and admired how a man could be condemned as a traitor, for
saying he will indevor all amendements he can to the advantage of Church
and State : for this is not to conspire *in necem et perniciem Republicæ*.
But the treason was alleged to ly in this, that his explanation did not bear
that he should indevor alterations to the better, with his Majesty's consent ;
but without any regard whither his Majesty disassented or not, he made
himselfe sole judge what alterations ware advantagious, and of the lawfulness
of the means and indevors to alter, which resembled to much the
words and meaning of the treacherous Solemne League and Covenant.
2^{do}. Thesfe words "any alteration," are indefinit, and æquipollent to the
univerfall, "all alterations," (this is sophistical,) without so much as ex-
cepting the Monarchy and fundamentalls of governement. 3^{do}. Thesfe
words, "consistent with my loyalty," ware judged taxative and restric&ive,
feing his loyalty might be far below the standard of true loyalty, not five-
penny fine, much lesse eleven-penny. Whatever ambiguity might be in the
words, if strained, (the clearest paper in the world may be thus made to

¹ *Vide supra* 225 *et seqq.* of this. See beside me, S. G. Mackenzie's printed Vindication of
my Lord Argile's forfaulter, against the pamphlet called the Scots Mist, &c.

infer treason, if tortured,) or inconsideratenesse in this explanation ; yet all ware fully convinced, that in such cases one ought to be allowed to interpret his oune words, (which Argile did very neatly in a speach to the Lords, as also modestly represented his great sufferings and services for his Majestie,) and that, (tho they deserved some lesser punishment,) yet it was called a diabolicall alchymy, to serue them to treason.—But desperation since this tyme hes made him shipwrack his loyalty and all, so that no more charitie can be bestowed upon his explication.—The designe was to low him, that he might never be the head of a Protestant party, and to annex his jurisdic^{tions} to the Croune, and to parcell out his lands ; and tho he was unworthyly and unjustly dealt with heir, yet he ought to observe God's secret hand punishing him for his crualty to his oune and his father's creditors and vassals, sundry of whom ware starving. (See more of this, *infra pag. sequente in principio, item pag. 235*, in two places of it.)

No. 680, 15 Decembris 1681.—The Privy Counsell, to strick terror in any who p. 234. complained of the injustice of Argile's Interlocutor, and to preserve St[r]athurd, Forret, and Neuton from opprobrie, in voting the explanation treasonable, Colinton having been *non liquet*, Harcous voting it was not treason, and Queansbery, Justice-Generall, concealing his vote, in regard it was carried affirmatively ere it came to him, (see the preceeding page, *item* the 8^o manuscript of Session affairs, page 65 : see the following page,) the Counsell, I say, named a Committee to call my Lord Argile's eight Advocats, (viz. Sir George Lockhart, Sir John Dalrymple, Mrs. Walter Pringle, David Thoirs, Patrick Home, John Stewart, James Grahame, and my selfe,) for subscryving our opinion, that his explanation contained nothing treasonable in it. We ware examined, but not on oath ; and it was called a new pra&tise to signe opinions with us, especially in Criminall cases importing treason, and a bad preparative ; tho lawyers should not be prelimited nor overawed freely to plead in defence of ther clients ; the Privy Counsell having authorized us to that purpose.—Tho some aimed at imprisoning and depriving us, yet after we had spoke with his Royall Hynes, he was pleased to passe it, tho he said, if any bad use ware made of our signed opinion, by spreading it abroad in England

to incense them, or reproach the Duke or the Judges, he could not but blame us. It was afterwards printed in England, and Argile's tryal, with another peice called, “A Scots Mist to weet ane Englishman to the Skin;” being sundry animadversions on Argile's proces.

20 Decembris 1681.—This night, about 9 a cloack, the Earle of Argile, No. 686,
fearing his life might be tane, escaped, *incognito*, p. 235.
out of the Castle of Edinburgh, under the disguise of [a] page ; and holding up the train of Lady Sophia Lindsay, his step-daughter, and fister to the Earle of Balcarrhouse.—No punishment was inflicted on hir. In 1645, the Earle of Airly escaped at St. Androis (when they intended his head,) by his fister's help. Ant. Matthæus in his Criminalls, tit. *de effractoribus carcerum*, tells, that the eminent H[ugo] Grotius was stollen out of prison by his wife, and carried out in a coffer, and thus substra&t from danger.¹

21 Decembris 1681.—The case betuixt the Marquis of Huntly, and Gor- No. 687,
don of Lesmoir, anent a submission, &c., was decided in favors of Lesmoir. p. 235.

22 Decembris 1681.—At Privy Counsell, Frazer of Bray was confined No. 688,
and sentenced to perpetuall imprisonment in Blacknesse castle, and fyned p. 235.
in 5000 marks for breaking his former instructions, and preaching in
house conventicles. He had a very pretty discourse on the King's eccl-
esiastick supremacy.

23 Decembris 1681.—Mr. Thomas Ramsay, minister at Mordington, No. 689,
offering a cautioner in the louseing ane arreiftment, laid on by Helen p. 235.
Ramsay, his fister, and James Aikenhead, apothecary in Edinburgh, hir
husband, on a depending proces ; and the cautioner being refused by Sir
William Bruce, clerk to the Bills, and Mr. Thomas offering *cautionem
juratoriam*, that he could not find a better, the Lords absolutly refused to
allow it in this case, tho they admitted it in passing suspensions.

¹ Casuists doe allow one to flee when he meets with injustice, and flight then is no argument of guilt. See Bishop Hall's cases of conscience, decade 2, case 4, page 101, and page 136.

No. 690, 23 *Decembris* 1681.—Argile was this day sentenced and forfaulted in p. 235. the Criminall Court in absence, and the sentence of death was pronounced against him as a traitor; only tyme, place, and manner of his execution (when he should be apprehended,) was remitted intairly to his Majesty; and with sound of trumpet, both in the Court and on the Crosse, his coat of armes was torne by the Lyon King at Armes and his brethren heraulds, and reversed, and ordained to be expunged out of the books of Herauldrie; and his posterity and blood tainted, and declared incapable of all honors, dignities, offices, &c. (See the præceding page, *item infra* page 252.) *Nota.* The [11th] A&t of Parliament [1669] allowing forfaultors in absence, is only in the case of Perduellion, and rising in armes against the King by nottor rebellion; which was not the species of my Lord Argile's crime; but they will get what they have done against him ratified in the first Parliament that meits; and the Judges are not secure without it. Likeas he could not be esteemed altogether absent, seing he was present at the debate, interlocutor, cloasing the assise, and reading the verdict, and only escaped before sentence pronounced: yet some quibled, that a citation should have præceided, to hear sentence pronounced.

No. 691, *Eodem die.*—Sir W^m. Bruce, upon a transaction made with Mr. James p. 235. Anstruther, (who gave him considerably for it: see it in my 8th Session manuscript, page 64,) demitted and resigned his place as Clerk to the Bills, and Mr. James was installed theirin.

No. 692, 26 *Decembris* 1681.—Upon searching Argile's papers, ther was a me- p. 235. morandum found of James Stewart the advocat's, refle&ting on the Governement; on which ther was ane order privily iſhued out to seize on him; but, before the search, he escaped, and went to Holland. Some others, and my ſelfe, were called to the Committee of Counſell, to ſee if we could give any account of that paper, or if it had been produced to us at our consultations with the Earle; but I had never ſeen it before.

ANNUS 1682.

5^o *Januarij* 1682.—Mary Gray, who was ravished, (*supra* page 172, No. 695, § 2, p. 236.) is, by order of the Privy Counsell, sequestrat in the hands and house of the Provest of Edenbrugh.

10 *Januarij* 1682.—At Privy Counsell, Home of Ecclesfe pershues Jean No. 697, § 2, Dalrymple for a ryotous illegall poinding, and shee him for a deforce- p. 236.
ment. Arthur Forbes and the Master of Salton have also a plea this day.

12 *Januarij* 1682.—At Privy Counsell, the Chirurgians' signator of a No. 700, ratification and confirmation of all ther former priviledges, superscryved p. 237. by his Majesty, and sought to secure them against the new erected Colledge of Physitians, was debate ; and the 13 A&t of the 10 Parliament of King James the 6^t in 1585, was objected against it, that it boor unusuall clauses, such as the discharging the Lords of Seffion, or other Judges, to medle with any of ther priviledges ; and the writer of it had not signed it on the back, as that A&t requires it, tho that perquisit be not under the paine of nullity of the writ ; but the certification is only deprivation of the wryter, &c. This was referred to a Committee.

2^o. Robert Barclay of Ury, the Quaker, gave in a complaint to the Privy Counsell, against Mr. James Keith, writer, for intercepting a letter of his father, ordering a suspenzion to be exped of a charge given by the same Mr. James Keith. The Lords fand it, *contra jus gentium*, and gave Mr. James a reprimande for it ; but no more.

3^o. One Alexander Martin, notar in Dunce, is conveened for uttering contumelious expressions against the King's Privy Counsell ; for one saying in his presence, “ That he heard the trumpet, so the Counsell was rysing,” he wished they might never sit doune again : which words he indevored to palliate and excuse as uttered only in sport.

4^o. 14 *Januarij* 1682.—A Privy Counsell held upon the news of the

second excommunication used at Lanrick, and burning the A&t of Parliament anent the Test ther. (See the Toune fyned, *infra pag.* 240.)

No. 701, 16 *Januarij* 1682.—The Provest and Bailzies of Edinburgh, as Shireffs p. 238. within themselves (having called me as ther Assessor, to fit with them, and assist them), doe judge Alex' Cowburne, ther hangman, or lockman, within 3 sungs (the Earle of Errol as Constable, nor his deputs entring no protestation, on the pretence of its being a current Parliament), for murdering in his oun house one of the licenced blew-goun beggars, called John Adamson, alias Mackenzie. The probation was slender, and most of it by weemen; (which is not so usuall, unlesse it be in some excepted privileged crimes, and that they be domestick servants: see Mackenzie's Criminalls, page 530;) and was only presumptions against him. Yet the Assise found him guilty, and referred his wife, Beffie Gall, to the Judges. The Bailzies caused hang him in chains, betuen Leith and Edinburgh, on the 20 of Januar; for it seimes they are not bound to execute, but only to pronounce sentence within 3 sungs after the delict; his wife they banished. (See my folio Historick manuscript, page 30.)

No. 703, 18 *Januarij* 1682.—By A&t of Privy Counsell, the Solemn League and p. 238. Covenant, with Cargil's Covenant, and some other papers, ware this day solemnly brunt at the Mercat Crosse of Edinburgh. The Magistrats being present in ther scarlet robes. Some wondred to see ther policy in reviving the memory of so old and buried a legend as the Solemne League was, (which was brunt in 1661 before;) and set peopple now a-work to buy it, and read it. And for Cargil's ridiculous Covenant, they had, about a 12 moneth before this, caused print it, tho that was only in contempt of it.

No. 707, § 2, 21 or 24 *Januarij* 1682.—His Royall Hyenne came to the Seffion, and p. 239. was present at the debate betuen the Chirurgians and Apothecaries.

No. 714, 31 *Januarij* 1682.—At Privy Counsell, the Parliament, which should p. 240. have met the 1 of March nixt, was adjourned to the 17 of April; and then from that afterwards, it was adjourned till the 15 of June, and

then to 28 of November ; and then on the 10 of October 1682 it was again, on his Majestie's Letter, adjourned till the 15 day of March 1683.

Item, The Privy Counsell writes up a Letter to the King, desiring that he may passe that signator of my Lord Argile's forfaultor, which was presented to him ; *de quo vide infra pag. 252.*

2 Februarij 1682.—At Privy Counsell, the Toune of Lanrick is fyned No. 716,
in 6000 mks, (not to be exacted of ther common good, which was scarce p. 240.
worth so much, but to be payed *per capita* by the inhabitants;) and that
for not prosecuting and doing diligence to discover and apprehend thesse
rebells, who came lately to ther mercat croce, and published ther Decla-
ration against the King ; of which *supra pag. 238.*

Item, Ane A&t made ordaining the country to carry corne and straw
to the King's forces, and to furnish them in the place wher they quarter,
or ly in garrison; which forces the people to carry it to them, contrare to the
late A&t of Parliament in 1681, anent the supply : (*vide infra 4^o Aprilis,*
the Commissioners of Eist Lothian.) The Lord Montgommery and Laird
of Skelmurly protested against the said A&t, which gave great offence.

10 Februarij 1682.—At Privy Counsell, Mr. Arthur Rosse, Archbisshop No. 722,
of Glasgow, complains on the Masters and Regents of that University, p. 241.
that they had refused him his right of precedency of ther Chancellor, in
electing of a Regent ; tho, in ther erection and foundation (see a litle of
it in Mr. Midleton's Appendix to Spotiswood's History, or the State of
Scotland, page 206,) of the said Colledge, the Bisshop is Chancelor, in
so far as they relate to the statuts of Bononia in Italy, and by ther statuts
and customis, a copie wheirof he produced, the Bisshop was Chancelor
and Praeses. The Colledge alledged for themselves, that they had juris-
diction without the Bisshop, *merum imperium et jus gladij*, to coerce
crimes ; so that if homicide ware committed within their bounds, they
could judge it even to death, as forraigne Universitites might doe. (See
Pacius de privilegijs Univerositatum Doctorum et Studiosorum, and other
Lawyers on the same subject.) The Counsell found the Bisshop's libell
relevant, and admitted it to probation.

2^{do.} *Eodem die.*—At Privy Counsell, Mr. Robert Martin, late criminall clerk, was stged for some malversations in that office, in suffering severall fanaticks for money to escape.

3^{to.} A custome which we had got up this winter, of printing the Informations in debaitable cases appointed for the Lords, was discharged by the Privy Counsell, to avoid refle&tions, that ware by Sir G. Lockhart and others insert therein. It was a pitty to prohibit so usefull a pra&tise. It's common in France, wher they are called *factums*, because they containe the matter of fact.

No. 731, 16 Februarij 1682, *post meridiem*.—Queansberrie's patent to be ane
p. 244. Marquis, was produced at Privy Counsell.

No. 742, 23 Februarij 1682.—Ramsay, Earle of Dalhoufie, admitted a Privy
p. 246. Counsellor, on a letter from his Majesty.

Item, a bill given in by one Hew Macgie, a mirror maker in the Cano-gate, representing, that by the practise and customes of other nations, any tradfman having 7 sones togither, without the intervention of a daughter, are declared free of all publick burdens and taxes, and have other incouradgements bestowed on them, for bringing up the saids children for the use and benefit of the commonwealth ; and then subsumed in his bill, that he had 7 sons so borne, and therfor craved from his Royall Hynes and the Counsell the benefit of that priviledge. The Privy Counsell referred him to the Magistrats and Toune of Edinburgh, to be favorable to him in ther stents upon that account.

No. 743, 24 Februarij 1682.—One Harvie, a weaver, who had affixed and pro-
p. 246. claimed the Bothuel Bridge declaration at Hamilton, in June 1679, was found guilty, at the Criminal Court, of rebellion, and was sentenced to be hanged for it, on the 3^d of March nixt, at Lanrick, for exemple and terror to others ther ; which was accordingly done, and thought hard, because he alledged he was forced to be ther drummer *vi majore*, and craved pardon ; which does not agree with the offers ware made to sundry of the other men and weemen, who ware lately hanged before this, that if

they would only acknowledge the King's authority, ther life should be spared: but the difference lyes on this, all ther guilt consisted in a perverse and treasonable opinion, and had never acted any thing, nor been in armes, as this Harvey had been. Some thought the indemnity in 1679 should have saved him; but he was construed to be a ringleader. Yet severall of the witnessses deponed, that after the reading of that proclamation, he cryed, God save the King. Only it may be said, this was *protestatio contraria factio*.

28 Februarij 1682, being Tuesday, a Counsell was extraordinarily called, No. 745, to cognosce on the ryot committed Sunday laist, in the kirk of Preston-^{p. 247.} pans, by some of the common peopple, upon one Broun, who was ther scoolmaster, and (Buchan, ther oun minister, having refused the Test,) was set up to preach to them, by the Bisshop; they pulled him out of the pulpit, and abused and affronted him. (*Vide infra* the 30 of March.)

Primo Martij 1682, &c.—This moneth of March is in place of our No. 746,
Summer Session formerly.^{p. 247.}

On the 6^t of March 1681-2, the Duke of Albany shipp'd at Leith for No. 749,
London. (See it *alibi*).^{p. 247.}

9 Martij 1682.—At Privy Counsell, John Broun of Nunlands, is No. 752, affoilzied from John Martin's pershuit, for having acted as bailzie of^{p. 248.} the regality of under my Lord Nithsdale, his constituent, who had not tane the Test, seing he had taken it himselfe, and had a gift, *ad vitam et culpam*, from him of the place; he was also quarrelled for finding him guilty of the thift of some dozens of apples; tho we say, *de minimis non curat lex, yet iustitia non confilit in quantitate*.

22 & 23 Martij 1682.—At Privy Counsell, some of the inhabitants of No. 762, the Toune of Peibles, have a complaint, one against another.^{p. 250.}

At the Criminall Court, ther are mutuall pershuits betuen Forbes of Corse, and Mowat of Bucquoholly, for ryots and oppressions against one another.

No. 768, 24 Martij 1682.—The Parliament, by proclamation, at Privy Counsell,
p. 252. is adjourned from April to the 17 of June nixt.

Item, The commission is past, anent the dividing my Lord Argile's forfaulter, under his Majestie's great seal.¹ By it ther is lands paying about yeirly 15,000 lb. Scots, allotted to his eldest sone, including what he got already at his marriage theirin; lands paying 500 lb. sterling *per annum*, given to the younger children for ther portions. Then a commision to the Lords of Session, to last till 1687, to rank the creditors of the Earle, with the creditors of the Marquis his father, (I think the debts due to Heriot's Hospitall, and that at Stirling, should have a preference before others,) equally in the last place: so it's thought ther will be litle or nothing to give them, especially if the Macleans get the Ile of Mull, MacNaughtan get back his land, and others their's. All the Jurisdictions, Patronages, Superiorities, Right of Generall Justiciary, Tosherridaroch or Mairship, Chamberlanry, Lieutenandry, Master-houfholdship, Shireffship, Crounery in thesse places, Constabulary, &c., are annexed to the Croun, and ordained to be ratified in the nixt Parliament. If a restitution of my Lord Argile shall be at any time heirafter obtained, against so slender grounded a forfaulter, *per modum iustitiae*, it would overthrow all this fabrick that Tarbet, Lord Register, and Haddo, Chancellor, and other of Argile's ennemis, hes made, and who, under borrowed names, hes got donatives and parcells of his estate. (*Vide supra* of his forfaulter, pag. 235.)

No. 782, On the occasion of Argile's forfaulter, it was regrated, that many
p. 255. innocent persones, the creditors, waffells, wife, children, and freinds of the traitor, by our custome, ware forfaulted and ruined.

No. 772, 27 Martij 1682.—At Criminall Court, the woman called Christian Fyffe,
p. 253. (who had struck Mr. Alexander Ramsay, the minister of Edinburgh,) was condemned to be hanged, on the 7 of Aprill nixt, for railing upon his Majesty, calling the King a villain, a knave, ane apostat, perjured man,

¹ (See a printed copie of the letters to the creditors, issued furth theiron by the Lords of Session, which contains the substance of the said commission.)

who deserved to be murdered, &c.: which shee would not retra&t, tho' hir life was offered hir, if shee would do it. This was a wild delusion of Cameron's sowing; but the Privy Counsell, looking on hir as mad, repreised hir.

29 March 1682.—This day, at the Commission for Plantation of No. 779,
Kirks, the Duke of Hamilton (who had hitherto refused the Test, and so
his Shirefships and Regalities ware filled by the Privy Counsell,) did
take the oath of the Test, and was allowed to doe it, tho' the 1 of Januar,
præfixed by the A&t of Parliament for the taking theirof, was expired.

30 Martij 1682.—At Privy Counsell, Sir William Hamilton of Preston, No. 781,
Sir Alex' Morison of Prestongrange, and the other heritors of Preston-
pans parish, are conveened for the ryot, mentioned *supra* 28 Februarij,
for suffering Broun, then preaching and praying, to be affronted by
boyes, who touted hornes, &c. The Counsell fand the libell relevant
against Prestongrange patron, and the other heritors, on ther former A&t
of Privy Counsell, because they ought to have been present, to have in-
couraged and protected the minister; yet some of them had very rationall
excuses of ther absence: (See them fined *infra* on the 27 of April.)

Sundry weemen in Temple parish are pershued, for affronting and
injuring ther minister; which libell was also admitted to probation.

This same Winter Seffion, ther ware many other things debated and No. 782,
determined, which I have ather forgot, or omitted purposely, as, 1° That
Mr. William Hog, Advocat, at laft prevailed in his Declarator against
Sir W^m. Ker, (*de quo supra*, pag. 65 & 118,) and the Lords reponed him
again to the place he had in the Chancellary chamber.

2 April 1682, being Sunday, the Privy Counsell met after sermon, No. 783,
and red a letter from the King, discharging the Counsellors, to goe out p. 255.
of toun, and commanding such as ware absent to returne. This was to
hinder Halton or others from coming up to London, as they intended,
till his Royall Hynesse came back to them again, which would be within

three weeks, or theirby ; and, in the mean tyme, to continue and keep the dyets of Counsell.

No. 784, 4 Aprilis 1682.—At Privy Counsell, Andrew Fletcher of Salton, and p. 255. the other Commissioners of the Cesse and Excise for the shire of Eist Lothian, are pershuied by the King's Advocat, for not meeting with the Shireff-depute, to set prices on corne and straw, grasse and hay, for the souldiers' horses ; at leist for making a mock A&t, in setting dounie prices, but not laying on the localities, wher the forces may be served with thesse necessaries. Some heritors alledged they ware not advertised ; others, that 2 or 3 was a sufficient *quorum*, with the Shireff-depute, for that matter ; and that they could not locall it, without the wholle heritors. The Lords assoilzied the Shireff-depute, as having done his duety, but fand the indytment relevant against the rest, and admitted it to probation ; instead wheirof, the Advocat referred it to ther oaths. (See the 3^d A&t of Parliament, anent the supply, made in 1681 ; and the A&t of Privy Counsell, anent corne and straw, enervating the said A&t of Parliament, dated the 3^d of Februar 1682.) After much travell and paynes tane by the Counsell, on thesse Commissioners of Eist Lothian, they at last consented to name storehouses and magazins in the most convenient places of the shire, whither the sojors might come and find corne, straw, and hay. The prices they modified then, ware a mark the threave of straw ; wheiras, because of its scarcitie, the rest of the country were giving 20 pence for it. The Counsell durft not goe directly counter to the forsaid A&t of Parliament discharging the forcing the tennents to carry ther straw, yet obliquely, they have altered it by ther said A&t of Counsell.

No. 785, *Eodem die*.—The ryot betuen James Grahame, merchand, and James p. 255. Somervell, the usher to the Exchequer, was called, and James Grahame fyned ; and tho the Bailzies of Edinburgh had judged him already, yet they did not regard it contrare to the 7 A&t of Parliament in 1617, article 5 anent the Justices of Peace ; in regard James Somervell, forsooth, was a member of the Exchequer.

13 & 20 Aprilis 1682.—James Aikenhead, apothecary in Edinburgh, is No. 786,
p. 256.
 pershued before the Privy Counsell, for selling poisonous and amorous
 drogs and philters to provock lust, wheirby a woman had narrowly escaped
 with hir life, had not Doctor Irving given hir ane antidot. The Counsell
 referred the tryall, and report theirof, to the Colledge of Physitians, as
 being *periti in arte*; who thought such medicaments not safe to be given,
 without first taking ther oun advise.

27 April 1682.—The case, *supra* page 254, anent Prestonpans kirk No. 787,
p. 256.
 being advised, the Lords of Privy Counsell fyne Sir W^m Hamilton of Preston
 in 1800 m^{ks}., (who being present, stood by and laughed,) Preston-
 grange in 900 m^{ks}., and the rest of the heritors and portioners of Preston
 in 4000 m^{ks}. among them, for not obviating that disturbance. 800 m^{ks}. of
 this fyne was ordained to be payed to Brown the minister, for the wrong
 then done him, and the rest to be given in to Sir W^m Sharp, the cash-
 keeper; tho it was alledged, he was not ther minister, and that they had
 no accession to the ryot; yet the Counsell proceeded on ther former Acts,
 ordaining the heritors to be liable for all dammages done to the minister,
 tho that A& would only feime to mean ther proper minister, and the
 refunding any damage or losse ministers should by robbery, &c., sustaine
 in ther goods; but not to extend to liquidate personall affronts, unlesse
 against such as might have hindred, and did it not.

Eodem die, and the following Counsell dayes, John Cheisley of Dalrey No. 788,
p. 256.
 complains on Daveis, Clark, &c., who rode in the King's Life-guard,
 that they had, by way of hamefucken, invaded him in his oun house,
 and wounded and beat him and his servants, and had tane possession
 of his stables, and thrust out his oun horses, &c. They had also a
 recrimination against him, viz., that they being come to fetch his pro-
 portion of straw for ther horses, conforme to the late A& of Parlia-
 ment and Counsell, he, with sundry of his servants and tennents, fell
 upon them with forks, grapes, &c., and had broken ther swords, and
 wounded some of them. It is referred to the Criminall Court. (See of it
infra 6 of July 1682.

No. 789, 6 Maij 1682.—Three trades prentises in Edinburgh, are pannelled at the Criminall Court, for raifing and fomenting, at leift for being accessory to the tumult and uproar, which happened against the King's forces, in the Hy street of Edinburgh, on the 3^d of May laſt. The Justices fand naked preſence not relevant, but fand it ſufficient to infer the pain of death againſt them, if it ware proven they were preſent with armes or weapons drawen, or uſed any encouraging words to stir up the rable to affault the ſouldiers. The Affife found no accession proven, but only that they ware preſent; ſo that they clenged them. The King's Advocat cauſed them re-incloſe; they adhæred, at which he was very diſſatiſfied. (*Vide ſupra*, the like caſe of one Lermont, page 20, and the A&ts of Parliament ther againſt tumults within Royal Burrows. See *infra pag.* 258, a guard impoſed on Edinburgh. See my folio Historique manuſcript, marked G, *pag.* 34.)

6 Maij.—The ſhipwrack at Limer Or; wher the Duke of York was in hazard of his life. See it at length in my folio Historick manuſcript.

No. 790, 8 Maij 1682.—Sir George Gordon, Lord Haddo, (the Duke of York p. 256. having arrived at Leith the night before,) from being President of the Seffion, is advanced to be Chancelor of Scotland, in Rothesſe's place, to the diſappointment of many, but cheifly of the Marquis of Atholl. The Marquis of Queansberry is made ſole Hy Trefurer; the Commission of the Threfurie is revockeſt; and the Earle of Perth is made Lord Justice-Generall, in Queansberrie's roume; and at Privy Counſell, the Duke of Albany being preſent, ther pattents are red, and they admitted. The Chancelor's Commission referves the precedency in Exchequer to the Trefurer when he is preſent, (which was always debateable before;) and ſome alledges ther is a warrand for the A. Biſchop of S^t Androis to take the place of the Chancelor. A. Biſchop Sharp had ſuch a letter, but never made uſe of it. (See more of this revolution in the forſaid Hiſtorique Manuſcript, and also in my 8^{vo} one of Seſſion Affairs.)

No. 791, 11 Maij 1682.—Duke Hamilton and the Earles of Tuedale and p. 256. Midleton are, upon letters from the King, admitted on the Privy Coun-

fell ; the first 2 had been ther before, and ware turned out by Lauderdale's means.

2. *Item*, one Mitchell pershues the Bailzie of the regality of Paisley, for using ane false protection, as if it had been subscrived by Patrick Meinzies, clerk to the Privy Counsell, which he disouned, it being contrary to the late A&t of Parliament in 1681, discharging protections.

3. 12 Maij 1682.—Lieutenant General Drummond is admitted a Privy Counsellor.

4. And the Earle of Dumfermling hes 300 lb. sterlind modified of the Earle of Callander, (*vide supra* thir parties, 25 March 1682,) for taking away the papers, and ay and whille the finall decission of the plea betuixt them. Duke Hamilton debated long against it ; but it being at last restricted to be for one year only, he yeelded.

5. *Item*, Drummond of Lundie is made Generall of the Artillery, and conjunct with Dalzeell, to officiat as Generall when he is absent, which Dalzeell took ill.

6. The Parliament is prorogued from the 15 of June, till the 28 of November nixt, 1682.

7. A Commission comes doun for trying the state of the coinage and Mint, against Halton, to Duke Hamilton, Perth, Tuedale, Atholl, Southesk, the Chancelor, Register, Generall Major Drumond, Gordonston, Bailzie Baird, &c., all ennemis to Halton, Generall, and to Sir John Falconer, Master of the Mint. They proceeded, while Halton was yet at London, to take cognition, by the declarations upon oath of all the members and officers of the Mint ; and it's said, Sir John Falconer, in hopes to liberat himselfe, at leist on promises that it should extenuat his oun guilt, did goe great lenths to load Halton with misdemeanors and malverfations, [1^{mo}] By inverting the King's part of the emoluments of the Scots Mint to his oun private gain. 2^{do}. In making the fynesse below the standard. 3^{do}. In coining 17,000 stones of copper money beyond the quantity contained in his Majestie's tuo warrands for the copper journeyes ;—all which struck as much, if not more, against himselfe, as Master, then against Halton ; yet he presumed his openneffe and ingenuity would procure him

favor. When Halton came home from London, in the beginning of Jullie, they proceeded verie summarly with him ; they urged him to depone as the rest had done. He refused, seing no man is bound *jurare in propriam turpitudinem*, wher the case may be criminall, nor to accuse himselfe ; but he gave in a representation of the state of the Mint. They refused him a hearing, or a sight of the processe, or the testimonies of the rest, that he might know what they had deponed against him ; but craved he might give his *juramentum purgationis*, that he was free of these misapplications which the *semiplena probatio* loaded him with. Halton's objections against Sir John Falconer's deponing against him are, 1^o *Inimicitia*. 2^o He is *conscius criminisque socius* ; (he is the fitter of this to discover.) 3^o He depones to liberat and exoner himselfe. (See *Mascardus de probationibus*, and other lawyers.) 4^o To elicit this deposition from him against Halton, ther ware promises of personall favors to himselfe ; which is the hyest degree of bribery and corruption. (*Vide infra* this affair of the Mint fully, page 290, *et seq.*) Then he gave in his defences, why he was not liable. 1^o Because he had exonerations and discharges from his Majesty. 2^o Because he was pardoned, and included in the generall Act of Indemnity past in 1679. This was resented as a declining of them ; and they repelled them *hoc loco*, seing they could not hinder them to inquire and proceed *per modum inquisitionis*. Then, being somewhat diffident of the King's Advocat, on the pretence he was sometymes out of toun, they adjoined Sir Patrick Home the advocat to him, who was a sworn enemy to Halton. This disatissified the Advocat. They frame the report without allowing Halton any sight of it ; and sends Perth and the Register with it to London ; and, tho the Duke of York had promised to Halton that no determination should follow on it till he ware heard before his Majesty, yet a Scots Counsell is instantly called, who, on the reading of the said report of the Commission, fly very hy, as they had been tuned, (Halton not being yet gone up,) and procures a letter from his Majesty, depriving him of all his places. (*De quo vide plura infra 31 August 1682.*) Halton, to prevent all hazard from the extremity of ther malice, formed ane ample remission of Collonell Lockhart's and his brother, the Duke of Lauderdale's, exoneration ;

but the Duke of York said there was no present necessity for the passing of it by his Majesty. (See my 4^o law manuscript, marked A. 7, page 40: see the 8^o manuscript of Session occurrents, *pag. 70, et seq. Item,* my folio Historick manuscript, page 38 and 41, and *infra* more of it, *pag. 266.)*

13 Maij 1682.—At Privy Counsell, Lermont, Maclellan of Barscob, No. 792,
one Fleming, and other prisoners, for being at Bothuel Bridge, are brought
in; and, on ther disouning of rebellious principles, the Duke declared he
wold interceed with his Majesty for pardons and remissions to them.

2. Gordon of Crachelay, (who was forefaulft for being in the late Rebellion, 1679,) came and gave in a petition to the Duke of York, imploring his clemency and mercy, and promising loyalty. He was receaved into favor.

3. Their is a bill given in by Fergusson of Kilkerren against the late President Dalrymple, for causing him be imprisoned at London. In regard the wholle Lords of Session had owned what was done against him by a letter to the King, therefor the Privy Counsell referred this businesse to the Session.

4. The Toune of Edinburgh, because of the late uproar among them, of the 3^d of May last, (*vide supra, pag. 256,*) are ordained by the Privy Counsell to levy and pay a company of 108 men, to serve for the Toune's constant guard on all emergencies, and the Duke to name the Captain and other officers. This was a clear breach of the liberties and privileges of the Toun; yet the Magistrats ware prevailed with, as to send up a petition to his Majesty, craving he would allow the same; which he did. So it was raised; and by ane A& of the Toun Counsell in September last, the inhabitants are stmented to pay them, some a groat, some 5 pence, and the hiest at 6 pence a week, for paying them. Patrick Grahame, Inchbraikie's sone, is captain of this Toun-watch, and so hes more power of the toun then the Provest has. The Magistrats craved they might be the givers of the commissions; but tho this ware granted, seing the persones are named to them by others, and they are not Burgessses, nor of ther oune tounsmen, it is still a great invasion. Ther is

no use now for the Toune's Trained Bands, or militia captains and companies, tho they be still keeped up. The Duke would give a vast summe to have such a breach in London's walls ; for it is, upon the matter, a surrender of ther Edinburgh militia over to him. The Trades of Edinburgh are exceedingly discontented with this concession of their Magistrats.

About this tyme ane A&t of Privy Counsell was made, oblidging Shirefs and other magistrats, immediatly on the noise of any field conventicle, or rising, to dissipat them, or give notice of it to the Privy Counsell, or some Officer of State, at the rate of 3 mile for each hower after his knowledge ; and if the advertisement come later, to be punisht as negligent. Duke Hamilton opposed this. (See him conveined on this A&t, in my folio manuscript A. 13, page 8^t.)

No. 793, 18 *Maij* 1682.—At Privy Counsell, (the Duke of York being parted p. 258. for London on the 5 of May before,) upon a complaint given in by Ruthven of Gairne against Mr. W^m Clerk, Advocat, bearing that he had hitherto keeped up all his estate and papers, and therfor craving he might be desired to give up the papers, and restore him his rents. Tho this was civil, yet because of the long vacance, he being ane Advocat, who would decline inferior Courts, the Lords referred the count and reckning to the Session ; but in the meantime modified 50 l*b* sterling to be payed yearly by Mr. W^m. to him during the dependance, (if Mr. W^m. should prolong it,) beginning the 1 terme's payment at Whitsunday coming. Mr. W^m. reclaimed much, offering instantly to count with him.

No. 794, 19 *Maij* 1682.—One Gray is this day hanged at the Grasse Mercat, for p. 258. disouning the King's authority, and for adhæring to Cargill's Covenant and faction.

No. 795, 22 *Maij* 1682.—The Privy Counsell confirmes the reestablishment p. 258. of the Staple Port of the Netherlands at Camphire, back from Dort ; and the Burrows elect one Mr. James Kennedy, formerly shiref-clerk of Aberdeen, to be ther Conservator in that part, in place of Harie Wilkie.

6 Junij 1682.—Johnston of Elchieſheills is perſhued at Privy Counſell, No. 796,
by his Ladie, (who is a daughter of Johnston of Lockerbies,) for ane
aliment, in regard ſhee could not ſafely cohabit with him, because of his
cruelty in beating hir, and threatening to kill hir. The Lords fand the
libell relevant, and admitted it to probation: and tho he had ane opulent
eſtate, yet they only modified 300 mks. yearly to hir.
^{p. 258.}

Item, The pariſhoners of the Path and kirk of Drone are perſhued for
affronting one Drummond, the new intrant minister, placed in roume of
Mr. Pitcairne, turned out: for while they ware instituting him, the rabble
toor ther gounes, and threw ſtones at them. They are imprifoned and
fyned.

Eodem tempore.—One Mr. Duncan, a minister in Perthſhire, is con- No. 797,
demned to death by the Earle of Perth, as ſtewart of Creich [Creiff?], for
murdering ane infant, begotten by him in fornication on his oune ſervant
maid, it being found buried under his hearth ſtone. He was convict on very
ſlender preuafions, which, however they might amount to degradation
and baniſhment, yet it was thought hard to extend them to death.
^{p. 258.}

Eodem tempore.—At Privy Counſell, tuo Conventicle miſters, called No. 798,
[Henry] Erſkin and [Patrick Warner] are baniſhed the Kingdome, and
are ordained to find caution, and never to preach within Scotland, nor
to returne.
^{p. 259.}

Item, At Exchequer, ther being a new Trefurer Principall eſtabliſhed,
he, like a new byffom, fell on ſundry methods to inrich the Trefurie.

1° His Maſteſty makes a new liſt of his penſions in Scotland, wher ſun-
dry are left out who had penſions formerly; ſo this was a revocation and
expunging of them upon the matter; ſuch as the Duke and Ducheffe of
Lauderdale's tuo penſions; the Proveſt of Edinburgh's penſion of 200 lb.
ſterling *per annum*; and Doctor Stevinſon's, of 1000 lb. Scots, &c. But
other penſioners are brought in, in ther place; ſo that it is only a com-
mutation and circulation from one to another, viz. my Lady Errol, Lady
Semple, Lady Largo, Earle of Traquaire, &c., all notorious Papifts.
Hence we may fee who rules the Court, and who expe&ts our preferments

and wealth. Next, the quota is not now 1000 lb. sterl^{ing} leffe then it was formerly ; for before this new modell, the wholle penfiones amounted a year to 25,500 lb. sterl^{ing}, and now they are already (beside others who may be added) upwards of 24,000 lb. sterl^{ing} ; so ther is no reall, but only an imaginary ease of the Exchequer.

2^{do}. His Majesty declares he will have no pension in tyme coming exceed 300 lb. sterl^{ing} *per annum*, except thesse of the Officers of State ; as the Chancellors, Secretaries, Presidents of the Counsell, &c., are each of them 1000 lb. sterl^{ing} a year.

3^{ro}. That no gifts of recognition, or of other casualties of the superiority, shall be heirafter granted to creditors, or other donators ; but that his Majesty shall exact his oune dues, and have the profit of them, being as fib to them as any other. Such a rigid advice as this was given to King James the 4th ; but after tryal, for gaining his peopple's love, he fand it convenient to forbear it.

4^{to}. Queansberrie's commission is more ample then any formerly given ; with power to him to choise the Clerks of Exchequer, (which the King did before, and then the Clerk Register,) and to preside ther ; and to examine Royall Burrows, and call them to account for ther spending ther common good, on the old A&ts of Parliament, which is the power the Chamberlain Airs had before ; and on the matter, it makes the Trefurer-depute and Lords of the Exchequer only his affistants, and no more.

5^o. By the late A&t of Exchequer, he requires, that all the valuation books in Scotland be brought in to him, that he may know ther rents, and holdings, and reddendos, and when any waird waffles dyes, &c. (See the said printed A&t.)

No. 799, *Eodem tempore, seu 9 Junij* 1682.—The A&t against hunting, and constituting Masters of the Game, is renued. (*Vide supra* the former A&t of the 2 of March 1680, at page 142, anent this same ; but this new A&t does not relate to it, farder then it casses and revooks it in the end of it, tho the 3 years theirin mentioned ware not yet exspired. The designe of it may be, to put of Sir John Maitland, Earle of Hadinton, and some other of the Masters of the Game, put in by that first A&t.)

28 Junij 1682.—The Bisshop of Edinburgh and Presbytrie theirof, No. 800,
depouse Mr. Ninian Paterson, minister at Liberton, from his church, for
^{p. 259.} sundry misbehaviors; but mainly for having defamed his Bisshop in
severall companies and occasions, as if he ware ane common adulterer.
And *4 Julij* 1682, Mr. Ninian gives in a bill to the Privy Counsell
against it, mentioning, he had appealed from the Bisshop and Presbytrie
to the Synod, from it to the Arch-Bisshop of S^t. Androis, and, in caise
he faill and delay to doe justice, then to his Majesty and his Counsell, by
virtue of his late ecclesiastick supremacy in 1669; and that the Bisshop,
(tho he should not judge in *causa propria*,) had proceeded *spreta appella-*
tione, and admitted sundry infamous and bribed witnessses against him.
This bill by the Bisshop's prævalency was not red.

Eodem 4 Julij 1682.—Mr. James Hutchison, minister at Dundonald, in No. 801,
the West country, is conveened at Privy Counsell, for debarring all who
^{p. 259.} had tane the Test, or late Bond, from the Lord's Table; and for breaking
his confinement within that parish; and for baptising the children of
others than his parishoners. The libell being referred to his oath, he
declined to swear, because it was criminall. The Advocat restri&tting it to
a pecuniarie or arbitrarie pain, conforme to the King's letter in 1673,
(see *supra* Duntraith's case, pag. 205,) the Counsell fyned him in 5000
m^{ks}. Scots, and sent him to prison for his contumacy, holding him as
confest, and cassed, revocked, and annulled the King's indulgence to
him, and discharged him to preach any more; which last censure
and interdi&t was fitter for a Church Judicator than a Civil. He was
innocent of the things libelled; yet for the preparative, he declined to
swear; and it may [be] thought the cognition of thesse things *alterius*
fori. He is knownen to be of very loyall principles. To fyne a poor
man like him, whose stock, it may be, exceeds not 6000 or 7000 m^{ks}.
is equivalent and all one upon the matter, with the forfaulting of him,
which is very hard; for *pænæ debent esse proportionatæ delictis et*
commensuratæ.

5 Julij 1682.—The haill Lords of the Seffion met, and my Lord New- No. 802,
^{p. 260.}

ton's Letter from the King, making him President of the Session, was produced and read. He comes in place of Haddo, now Chancellor.

2. *Item*, Sir George Nicolson's Letter to be a Lord in place of Newton was also read; and two Lords appointed to examine him and report; which they did, and he in the afternoon was sworn and received. Some doubted how this could be done, not being Session time; when the late Act of Sederunt, in 1674, ordains he should sit a week in the Utter House, &c. Some say the King's Letter expressly dispensed with this formality. We saw it in October and November 1681 past over and neglected, in the admission of Drumcairne and Boyne on the Session: only it may be said, they came in by virtue of a new Commission from the King to the whole Lords.

3. Pitmedden was made one of the Criminal Judges in place of Newton, and was this day received, and sworn by Perth, Justice-General.

4. The Lords had some federants on their Commission against Argyle's forfeitor and creditors, and took in some creditors' claims and certificates of their loyalties; but adjourned till August, and then to November 1682.

5. Pitmedden, being this week on the Bills, reported the case of an advocacy to the Lords, given in by the Town of Paisley against the Sheriff of Renfrew, craving a general advocacy of all actions should be pursued against any of their inhabitants before the Sheriff Court; because they were expressly exempted by their charter in 1488, given them by King James the 4^t, with all the privileges of the Burghs and Abbeys of Dumfermline, Newburgh, and Arbroath; (see a note of it *alibi*;) and they had a declarator of their exemption depending before the Lords. The Lords refused a general advocacy, as unusual; but, when they should be pursued, ordained them to give in special advocacies of each particular action, and the Lords would consider them. Yet I see a general relaxation of all hearings *quoad* the effect of a service, granted to the Earl of Crawford, in Dury, 19 Junij 1630.

6. *Eodem die, post meridiem*.—At Privy Council, Gordon of Avachie pursued a ryot against

7. *Item*, another ryot is pursued by John Maister, portioner of Innerask, against Gordon, Viscount Kenmuire, for dispossessing him out of some

lands of Kenmuire's, which he had comprised. Alledged, the affair was wholly civil, and Kenmuire had a title to the possession; for he had acquired in a share and proportionall part of that same apprising.

6 Julij 1682.—John Cheisley *contra* Daveis and Clark. (*Vide supra* No. 803, thir parties, page 256, 27 April 1682.) The King's Advocat, at the Criminall Court, so far pravaricated, that he declared he passed from hamesucken, and insisted only for the invasion and oppreßion, contrare to the pershuar's inclination, and his ounē advice formerly. They founded on a warrand they had from Murray, the Lieutenant of the King's troup, to come and force corne and straw, but *mandatum rei illicita non valet*. The Affise found them guilty. The one is banished the kingdoms, never to returne under the pain of death; and Clerk is degraded from the King's troup, and ordained to find caution for his good behaviour in tyme coming. This is not eneugh to represso the souldiers' insolence; the punishment of hamesucken, (which they ware certainly guilty of,) is death. (See Sir G. Mackeinzie's Criminalls, page 112.)

Before this tyme, Alexander Gartshoire, merchand in Edinburgh, having been affronted by one Mitchell, a baxter, he in revenge employed Muirhead of Lauchop, and some others, to fall upon him, and beat him, and break his armes and legs; this being discovered, Mitchell was about to have pershued him for assafination, and hyring men with money to so base ane act. Gartshoire gave him 20 lb. sterling to passe from his pershuit. (See Carpzovius and others *de crimine assafinij*.)

8 Julij 1682.—Thomas Lermont, sone to Mr. Thomas, the Advocat, No. 804, kills Somervell younger of Drum, in a small quarell after drinking, and that with young Hew Patersone of Bannockburne's sword, and then he flees: he lived a day or 2 after, and forgave him, and bad him flee; and some alledged his wounds ware not mortall, but ware misguided. A præcognition was presently tane by the Criminall Court, what was Bannockburne's carriage in this affair; and witnesses ware examined, which was done by his father, to vindicat and clear him of any accusation to it.

No. 805, 11 July 1682.—One Merry is condemned to be hanged, for a
p. 261. slaughter committed by him about 6 years agoe. Item, one Walker is also sentenced for slaughter.

No. 806, *Eodem die*.—James Douglas, son to umquhile Mr. William Douglas, the
p. 261. Advocat and Poet, having killed Lindsay, his step-brother, and son to Evelock, on whom James his mother was again married, he is brought to the Criminall Court, and ther, on probation *de corpore delicti*, he is found guilty by the Assise of the slaughter, and condemned to be headed at the Crosse of Edinburgh, on the 4 of August nixt.

After his condemnation, he having confessed that it was he who in winter laft, in Januar, put fyre in Henry Grahame's wryteing chamber, at the Court of Guard in Edinburgh, out of revenge, and that he had first stollen some books their, (which he did out of revenge, tho it was soon quenched;) and the King's Advocat, and the Marquis of Douglas, who had some of James's means in his hands, considering if thir tuo, viz., wilfull fyre-raising and theft in a landed man, ware proven against him, any one of them ware sufficient in law to forfault his estate, and take it from his 2 sisters, (he having about 36,000 m^{ks}. and more,) by the A&ts of Parliament making thesse 2 crimes statutory treason; and that the Marquis, by Queansberrie's favor, might get the gift of his forfaulter from his Majesty, they obtained from the Privy Counsell a repreive to him for some dayes, which the youth himselfe was very desirous of, giving them ground to imagine he would confess it over again: wheirupon they gave him a new indytment of treason on the forsaid 2 grounds; but when he appeared on the 9^t and tent dayes of August, he was so taught, that all the pains the Earle of Perth, Justice-General, could take on him, could not extort a confession from him judicially in presence of the Assise, or that the former confession he had emitted in the Tolbuith, and signed, was his; for he would nather ounit, nor deny it, but bad them prove it. The first thing his Advocats pled, was a delay, because he had raised ane excusation on thir heads, 1^o Of his minority, not being yet 19 years old: 2^o of his frequent relapses unto melancoly and hypocondriack fits; which was to be execut at Perth, &c., and could not in so short a tyme be

returned. The Advocat answered, that no respe&t could be had to ther exculpation, seing it was not ready : 2^{do}. it was null, a copie of it not having been given to him : 3^{do}. the reasons of it ware not relevant ; for one after 14, as *doli capacissimus*, may be punished *pæna homicidij ordinaria* ; and melancoly fits is not eneugh, for no man will attempt to raise fyre without some degrees of fury and madneffe ; but thesse degrees will not excuse *a pæna*, unlesse it be a total *deliquium* and ecclipse of reason ; wheiras heir we find a long tract of reasoning and deliberation in him ere he perpetrat the fact. The Criminall Lords repelled the exculpation ; wheirin the Advocat said to me, in private, he thought them unjust. Then in *modum probationis* to the Affise, the K. Advocat produced his confession, signed by himselfe, and emitted in presence of the wholle number of the Justices, at leist of a *quorum*. Alledged, this was not a judicall confession, so as to clear and convince the Affise ; for by the 90 A&t of the Parliament held in 1587, all probation should be led in presence of the Affise ; now the Affise did not see him subscribe these, nor hear him confess it, they nather being then present nor sworne, theirfor it cannot be probative *quoad* them. The Criminall Lords fand it was a judicall confession ; but ware so cautious and circumspe&t, that nather did they suffer the Clerk to minut this interlocutor, but only pronounced it *viva voce* ; nor would they adde the words of a probative confession, (which would have determined all the ambiguity,) but only held it in the generall of a judicall confession ; which the King's Advocat thinking sufficient, he closes, and renunces farder probation, and repeets to the Affise the written confession, with the Lords' Interlocutor. The pannell's Advocats, viz., Sir David Thoirs, &c., 1^o take instruments, that all farder probation was renunced : 2^{do}. for the mother, children, and freinds of the pannell, he protests, that whatever sentence, (tho of forfaultor,) should passe against him, yet it may not prejudge ther interests ; but that they, in a declarator upon his furiosity and other grounds, (of which a little *infra*,) before the Seffion, may be reponed to his estate. Then he spoke to the Affise, that it was true the confession produced was in some sence judicall, as the Lords had found it, in so far as it was taken by them, and emitted by him, when they ware fitting in judgement ; but that was no-

wayes sufficient to satify the conscience of the Affisers, wheiron they might condemne the pannell ; for it was not judiciall *quoad* them, it nather being emitted nor adhæred to in ther presence, so that they knew not if it was his subscription or no : and they ware to beleive no probation by forsaid 90 A&T, but what they saw and heard from the pannell's oun mouth ; and such a truth was this, that my Lord Advocat, in his printed Criminalls, pag. [258] pleads passionatly for it, that a confession made to the Judges, but not to the Affise, ought not to be regarded, else it would confound the office of Judges, by making them witnessses, &c. The King's Advocat finding he had mistaken himselfe, he raged and fwore, and railled on Sir D. Thoires, and studied to irritate the Criminal Lords against him, as if he had harangued to reproach the Court and ther Interlocutor ; and denyed that all probation neided to be in presence of the Affise, so as to be reiterated ; and instanced wher one is pershued for forging false writs, all that is produced to the Jury is only the Lords of Seffion's decret of improbation, wheiron, without leading the witnessses which ware the ground of that decret, the Affise instantly find him guilty, tho ther be no more ther but the Clerk's assertion ; and he threatned the Affisers with ape Affise of error, if they became like the seditious Ignoramus juries at London ; and that he would infallibly prosecute them, and get them severly punished, as he had done lately with some clenging Assysers of Somervell of Urats, in 1681 ; and if ther wer any neid *ex superabundanti*, he would yet lead the Clerk of the Court, and his fervant, John Anderson, and the Lords on the bench as witnessses, that they all heard the pannell confess the fact, and saw him subscryve that paper ; and it was yet tyme, seing in *criminalibus nunquam concluditur* ; but that maxime is *nunquam contra reum*, and so in favors of the pannell, that his defences are receaveable at any tyme. If he had led that probation in due tyme, the Affise would have been rendred unexcuseable, and would have had no pretence wheiron to have clenged him. But this being omitted, when they incloſe, (the most of them ware writers and merchands in Edinburgh,) they consider with themselves, that tho the evidences of the truth of his burning that chamber ware great, so that few doubted of its truth, yet seing he was to lay doune his life on another

account for his murder, (so he was not to escape,) and that all the designe here was a covetous inhanſing of his eſtate, and defrauding his poor fifters theirof ; and that they, by the Advocat's oversight, had a latitude to find it not ſufficiently proven to them, they, upon thir narrow grounds, doe by their verdi& clenge and affoilzie him from the wholle contents of the libell of treafon. The Advocat ſtormed and ſwore he ſhould have them all impriſoned, (yet he never raiſed a ſummons of error againſt them,) and fynded, and declared infamouſ, and the nixt Affiſers he ſhould choife, ſhould be Lithgow's fogers, to curb thir fanatiques : but thir tranſports of paſſion ware ſmiled at, and ware judged no great ſervice to his Majeſtie's Governement. The Juſtices ordained the former ſentenſe of death to be execute upon him for his muſter, which was accordiugly done on the of Auguſt 1682. (See hiſ ſpeach beſyde me.)¹

Primo Auguſti 1682.—At Privy Counſell, Peter de Braweis perſhuſes No. 807,
Alex^r. Hunter, tackſman to the Toune of Edinburgh, as administrators p. 261.
for Heriot's Hospitall, of ther Cannomilnes, on the water of Leith, for demoliſhing and ſpoiling a paper milne he had ere&tēd ther for his manuſactory of playing cards, wheirof he had gotten the gift and patent from the Privy Counſell on the 20 of December 1681, (which I have ſeen,) prohibiting ſtrictly the impoſition of any ſuch carts, and allowing him, by a moſt exorbitant power, to ſearch and feize on them to his oune uſe ; and alſo for throwing his wife in the dam, and uſing approbrious words. The libell was admitted to probation, and Hunter, (by the perſhuar's moyen with the Lady Erroll and ſome Papifts,) is fynded in 50 lb. ſterling, and impriſoned, and ordained to find caution to indemnify the perſhuar.

2, 3, 4, 5, 9, & 10 dayes of Auguſt 1682.—James Hamilton, and ſundry No. 808,
other Brewars in Edinburgh, give in a complaint to the Privy Counſell p. 263.
againſt Sir John Young, Sir W^m. Binny, Sir James Dick, Ro^t Milne of

¹ [Fountainhall has here added, at ſome length, "The grounds of law, whereon, beſydes his minority and furioſity, James Douglas might have been defended againſt this fyre-raiſing, which were omitted by hiſ lawyers :" See hiſ printed Deciſions, vol. i. p. 188.]

Barneton, and Magnus Prince, bailzie of Edinburgh, tacksmen and partners of the excise and imposition upon ale, within the Shires of Mid and East Lothian, and the Toune of Edinburgh, and the Commissioners of the Excise, setters of the said tack ; alledging, the taxmen oppressed them, and to hear and see it found and declared, that it was illegally set, and procured by bribing my Lord Halton, one of the Commissioners setters of it, by giving him 14,000 mks., and by making Sir Ja. Dick, and M. Prince, then magistrats of Edinburgh, partenars in it, the said Sir James being also one of the Commissioners and Praeses, and therfor the tack should be declared null, (the Brewars having at the setting offered more advantageous conditions, which were refused,) because money was given by compact and collusion to get it set ; and magistrats, contrare to ther duety, had fermed a part of the Toune's common good ; and the tacksmen had extortioneon and overvalued the Brewars, in exacting 4 mks. per boll in the suburbs, and had not sworne ther surveyers, (as they ought to have done,) and had forced the Brewars to buy bear from them at exorbitant rates. It was alledged, a remuneration or gratuity, given long after a tack is sett, without any previous paction or promise to give it, was not bribery in law ; and that magistrats being Brewars before they ware elected, they ware not bound to desert ther trade of brewing, but might have a share in the tack of the Excise as weell as any other burgesse. And the A&ts of Burrows pretended to be against it ware not produced. (See the Informations in this cause.) The Lords of Secret Counsell found the Commissioners of Excise had power, by A&t of Parliament, to manadge and regulate this part of his Majestie's revenue, the annuity of the Excise being 40,000 lb. sterlinc per annum, and for which *in subfidiu*m the Commissioners are personally liable, to the best advantage, by tacks or otherwayes as they please ; tho the said [14th] A&t of Parliament in 1661, speaks only of the lifting it by way of colle&tion, and not setting it in tack ; and tho they would be loath to quarrell a standing tack as this was, (tho they fand it was not such a tack and reall right as is mentioned in the 17 A&t Parliament 6^c James 2^d, which speaks only of tacks of lands and of civill rights, not of tacks of the Excise of brewing,) cled with possession, nor yet discouradge or limit the Commissioners of Excise in

manadging the King's rent. Yet upon the wholle matter, ther appeared to have been fraudulent and disingenuous methods used to obtain this tack to be set to thir tacksmen ; therfor superceiding to give answer to the relevancy, (the Privy Counsell use not to make A&s before answer, but ordinarily præmits the probation, and considers the wholle complex case at the advising the probation,) they ordained the pershuars to condescend in speciall on the qualifications of the particular fraud and deceit used by the taxmen or the Commissioners, for obtaining the said tack of the Excise to themselves, or giving of any good deed for it, and what it was, and to adde it to ther libell, and to give it up to the defenders to see ; which they accordingly did, and named Halton.

And offering to prove it by the oaths of the taxmen and others ; it was objected, that they being the alledged givers of the bribe, ware *socij et participes criminis*, and tharfor not habile witnesses in law, as also, they ware not given in in list with the double of the libell. The Lords being resolved to goe over any thing to reach and stain Halton, they also again, before answer, ordained them to be receaved, and they would consider ther validity at the advising, and allowed them to call any other witnesses they pleased for tryall theirof, and appointed the Toune's gift, &c., to be produced to them, and named a committee ; and in the mean tyme, that the payment of the King's annuity might not be retarded, nor the poor brewars oppressed, but rather incouradged in this Capitall city, and that this last tack hes not been set with the cautions and limitations to the tacksmen contained in the former tacks, and that they had of late exacted 2 mks. per boll throw the suburbs, under pretence of his Majestie's gift, theror they ordained the present tacksmen to continue as tacksmen of the Excise and Imposition till the advising of the cause, and did take of and discharge any A& or order formerly emitted by them, giving a stop to the uplifting of the Excise by quartering ; providing that first the tacksmen find sufficient caution, acted in the books of Privy Counsell, that what Excise they should uplift theirafter, they should make it furth-cummand, as accords of the law ; and discharged the tacksmen to uplift any more then a merk Scots for the Toune's imposition for each boll of malt brewed within the Toune's suburbs, and imported into the said Toune

of Edinburgh ; and the Lords being carefull that untill the advising of the cause, the Brewars might have no just ground of complaint upon the taxmen for exaction or unequall imposing of the Excise, they ordain the Commissioners of the Excise, who, by A& of Parliament, are intrusted with the lifting theirof, to have frequent meetings, and to hear and determine upon any complaint made by the Brewars, or upon any difference that shall happen to fall out betuixt them and the taxmen, and particularly ordaines the Commissioners to cause the tacksmen observe the former accustomed rules and methods prescryved by the Commissioners to the former tacksmen, before the tack was set to the Brewars.

Then the Lords having considered the probation anent that part of the taxmen's attempting to corrupt and bribe the Threfurer-Depute, for preferring them to the tack, and his accepting and receiveing the said 14,000 mks. of bribe upon that account, they fand Sir John Young, Sir William Binnie, Sir James Dick, Magnus Prince, and Robert Milne, tacksmen and partners, ware guilty of attempting to corrupt and bribe the said Tresurer-Depute as one of the Commissioners, for procuring his favor to the setting of the said tack of the Excise, about the tyme of setting it, or some tyme theirafter, to get præference ; for which base and unworthy contrivance, they decerned them all *in solidum* to make payment to Sir William Sharp, his Majestie's Cashkeeper, for his Majestie's use, the forsaid summe of 14,000 mks. Scots, designed by them as a bribe to be given to Halton. And in regard the saids Sir William Binnie and Robert Milne's parts by the probation appeared to be hellish and foul, and they prevaricated in ther depositions, and that they confesse they receaved that summe from the rest to be given as a bribe to the Tresurer-Depute, and that he refused to accept of it, and yet they keeped it up, and concealled the same, as if it had been receaved, and made the rest beleive that Halton had taken it, till after the intenting of this proces, and that they had in a high measure abused and traduced the said Tresurer-Depute in his name, honor, and reputation, being a Privy Counseller and officer of State ; theirfor the Secret Counsell, for ther personall cryme, fyned the said Sir William Binny in 9,000 mks., and the said Robert Milne, (whosse houfe in Leith was burnt just the night or

two before,) in 3,000 m^{ks}., and this over and above the forsaide summe of 14,000 m^{ks}., wheirof they ware to pay ther shares; and allowed them releiff amongs themselfes, *quoad* the said 14,000 m^{ks}. that is ordained to be escheat, confiscat, and brought in to his Majestie's treasurie, but discharges all releiff of the other fynes imposed on them for their unfair dealing, and ther ounē personall cryme of a hy nature, to be brockers, fraudulent tamperers, and transactors with the taxmen to procure that bribe to Halton; and ordaines the saids wholle fynes to be payed in upon a charge of horning proceeding on 6 dayes: And superceids to give answer till the first Counsell day in November nixt, how far Sir James Dick and Magnus Prince have contraveened the laws in accepting ane tack of any part of the comon good, being Magistrats the tyme of setting of the tack, and how far Sir James may be lyable in law, he not only being a magistrat, but also a commisioner, settor of the said tack; and if any of the burgesses should at that tyme complain of them, they would hear them, (which was a doun right invitation;) as also, 2^{do}. Superceeded till November the confideration of that other part of the libell and conclusion theirof for restoring to the Brewars what they had unwarrantably exacted or extorted from them, allowing the Brewars in the mean tyme to give in to the committee named a particular condescendance of ther severall exactions, wheirof they crave repetition, that the Counsell may then confider theiron; and ordained the tacksmen to exhibite ther books, that it may appear what the bygane excrescence hes been, and ther profit over and above the quota of the King's Excise, and the saids Brewars pershuars to adduce probation, *prout de jure*, for proving ther particular exactions; and 3^{do}. They reserved till then to confider if taxmen may exact 4 m^{ks}. per boll legally from the Brewars in the Potteraw, and West Port, &c., and ordained the committee, during the vacance, to take in the Brewars' clames and complaints wher they had been extortioned, by exacting more of them then was due.

And having advised the Trefurer-Depute's part, they doe not find it proven against him that he accepted of the said bribe offered to him, and therfor affoilzied him from the libell, and declared him quite and free theirof in all tyme coming;—which some wondered at, and thought ther

might be bribery used by him to obtain this absolvitor; for it was well eneugh knownen he had taken the said bribe, but finding so strict a scrutiny to affront him, he gave it back after the proces, that they might have freedome on oath to say he had not taken it; like ane Irish Judge accused for a bribe, and it being proven it was left on his table, his defence was, it might be lying ther yet untouched by him, and accordingly he had conveyed and laid it on the same place, and it was found ther. But the Lords, in regard from the depositions, they find, that the pershuars had probable grounds for raising the said complaint, and for alledging the bribe was given, it having been offered, they doe not find the same calumnious, and therfor declare the pershuars are nowayes culpable upon that account, notwithstanding of this absolvitor. If they tryed Halton's oath on this particular, it's like it would have discovered more.

No. 809, *Eodem 8, 9, & 10 Augusti 1682.*—The Fleschers of Edinburgh are p. 266. shued before the Privy Counsell, by the King's Advocat and the landwart fleschers in the Land Markat, for breaking and contraveining the Privy Counsell's proclamation, and taking more then 4 pence for a pound of flesch. (See a note of the fleschers of Edinburgh's gifts, and sealls of causes, *alibi besyde me.*)

Item, James Douglas is pannelled at the Crimall Court for statutory treason, in raising fyre and stealing. (See the fate of this proces, *supra pag. 261, et seq.*)

Item, James Hamilton, Esquire, gives in a bill to the Privy Counsell against Mr. John Eleis of Eleiston, craving ane aliment of him, which was referred to the Clerk-Register. (See thir parties, *supra.*)

Item, Carmichaell of Balmedy pershues Mr. Charles Ged about a tutory.

No. 810, *29 Augusti 1682.*—Patrick Tailziefer, merchand in Edinburgh, pershues p. 266. one John Geddy before the P. Counsell for a ryot committed on his tennents beside Falkland, in breaking up ther barnes, and taking away ther cornes. The Counsell, after probation led, ordaine Patrick to be repoffessed, and fyne Geddy in a 100 m^{ks}. Scots.

31 August 1682.—His Majestie's letter was this day red, against my No. 811,
Lord Halton and the other officers of the Mint, (dated the 24 of August,
^{p. 266.} that same day the Duke of Lauderdale dyed,) viz., Sir John Falconer,
master, John Falconer, and Alexander Maitland, warden, and counter
warden, &c., bearing that he had confidered the report of the Commission
named by him to try the case of his Scots Mint, (*de quo supra*, 12 May
1682, *pag. 257.*) with the advise of his Scots Counsell at London, (who
flew very hy against Halton on the reading, it being tuned up by the
Duke of York, and the Earle of Perth, and the C[lerk] Register, who
took up the said report,) and found they had malversed grossely in ther
trusts, and therfor suspened and deprived them all, and put a stop to the
coinage till farder order, and ordained his Advocat to infist against them,
ather criminally or civilly, before the Consell, as he saw just: And now,
since the King hes ordained them to be pershued before the Seffion, for
restitution of what they had intromettet with more then they had warrand
to coin, Halton, on the news of his brother the Duke's death, parted that
same day for London that this sentence was intimat, and a committee
named to goe and close up the Mint-house, and feall all. And thus fell
that unhappy man, unregreted by many, because of his disoblidging info-
lence when in power; yet generally men when low meit with some com-
miseration and pitty, especially if they be estimat sufferers by such of
whom they have deserved weel, and if the Duke of York may be called
ungrate to him, see it debate in my folio Historique Manuscript, marked
G, page 41, *et seq.*

Eodem die.—Captain Grahame of Claverhouse, having imprisoned some No. 812,
of Sir John Dalrymple's and his father's tennents in Galloway, for Con-
^{p. 267.} venticles and absence from the Church, Sir John presented a bill of sus-
pension to the Privy Counsell, alledging, that he, as heritable baillie of
the regality of Glenluce, within which they dwelt, had first attached and
prevented Claverhouse, and fyned them; and so was præferable both in
diligence and to the casualities and emoluments of the fyne; the A& [of]
1681 of the cumulative jurisdiction, not mentioning the fines to be the
King's, but leiving them as they ware before that A&. Claverhouse

answered, that he, as having a Shireff's commiffion and power from the Privy Counsell, had first cited them, and Sir John's decreets ware but collusive, and not to be regarded. The Counsell ordained them to be fet at liberty, they first configning ther fynes (which ware most exorbitant) in ther clerk's hands, and reserved the point of jurisdiction, and who had right to them, (they being under the quality of heritors,) till November, to be debate ; but, in the mean tyme, gave a chek and reprimande, that heritable Bailzies or Shireffs, who are negligent themselves in putting the laws to execution, should not offer to compete with the Shireffs commissionat and put in by the Privy Counsell, who executed vigorously the King's laws. So that it is now evident, that what by these Counsell Shireffs, and what by the explications and extensions of the late A& of Parliament in 1681, anent the King's cumulative jurisdiction, they designe to insignificat all the heritable offices in Scotland, such as regalities, bailzearies, &c. (See thir parties, *infra* 14 December 1682, pag. 280.)

No. 813, 28 & 29 *Septembris* 1682.—At Privy Counsell, Hew Wallace, brother
P. 267. to the late Justice-Clerk Craigie, who had prevailed with Major Biggar, to give a disposition of the lands and coall of Wolmet to the said Hew's sonne, he taking on the name and armes of Biggar, he pershues before the Privy Counsell a ryot or violence committed by some at Wolmet, when he was going to take posseffion of the said estate, conforme to his disposition and infectment. The Lords imprisoned some of them, and ordained them to be scourged.

No. 814, 10 *Odoctobris* 1682.—This day, at Counsell, by a letter from his Majesty,
P. 267. the Parliament is adjourned from the 28 of November nixt, till the 15 of March 1683.

2^{da}. The Earle of Midleton's patent to be conjun& Secretary of Scotland with the Earle of Murray (see of this in my Historick Manuscript, pag. [40],) was red, and recorded in the books of Privy Counsell.

3^{ta}. Robert Andrew, upon confignation, hes a suspenſion of a decree pronounced against him by the Shireff of Fyffe, fyning him for absence from his parish kirk more then 3 Sundayes togither.

WINTER SESSION.

NOVEMBER 1682.

Primo Novembris 1682.—My Lord Chancellor Gordon produced his No. 815, patent of being Chancellor, and caused record it in the books of Sederunt; ^{p. 269.} and it being quæstioned, whither he neided take the Test for his place as Praeses of the Seffion, it was thought unneceſſar, ſeing he had taken the Test *qua* Chancelor already, in the Privy Counſell.

2. Prefident Neuton proposed to the Lords, that for keiping ane æquable and ſteddy course in adminiſtrating of justice, that they might not be furcharged with throng in the end of the Seffion, that the Lords would pun&tually meet at 8 a clok of the morning, and cited for him the 49 A&t of Parliament in 1537, at the iſtitution of the Colledge of Justice; and that they might meet in the afternoons for bills and concluded cauſes, and that thoſſe who came after the hower, ſhould forfeit and pay halfe a dollar each tyme. The Lord Nairne and ſome others mutineered, and alledged that old A&t of Parliament made againſt the Prefident, for tho it ordaines the Lords to come in at 8 howers, yet they diſſolved then at 11: fo it was but 3 howers attendance, which they ware yet willing of; and ther was no law could oblige them to afternoons meetings; and to fyne them was like ſcooll boyes. It was agreed, the Lords ſhould meet peremptorily at 9, and on the Wednesdayes afternoon, ther fitting no court then, ſave the Commission for Plantation of Kirks ſometymes; and cauſed intimat to the parties and Advocats to attend them.

6 Novembris 1682.—At Criminaſ Court, Mr. Thomas Gordon, wryter No. 816 to the Signet, upon a gift from his Maſteſty, is receaved clerk to that ^{p. 269.} Court, notwithstanding Mr. Thomas Skeen, advocat, had a gift of that ſame office from Richard Maitland, Lord Justice-Clerk. (See the 8^o Manuscript of Seffion Affairs, marked I. page 72, *vide supra*, pag. 226.)

No. 820, 7 Novembris 1682.—At Privy Counsell, his Majestie's letter was red
 p. 270. anent the Officers of the Mint, (*vide supra*, pag. 266,) bearing, that, wher
 he had formerly ordered them to be pershued for ther malversations be-
 fore the Privy Counsell, or Justice Court, now he had altered his purpose,
 and ordained his Treasurer and Advocat to infist against them before the
 Lords of Seffion ; and, in regard John Falconer, late warden of the Mint,
 was omitted in the former order, and, yet, from the report, it appeared he
 was as guilty of malversations as the rest ; theirfor he ordained him also to
 be pershued with the rest.—*Nota*, This John Falconer, on the news of it,
 dyed suddenly of heart-break, at his house of Phesdo, tho some averred he
 hanged himselfe in his stable ; upon which report, on the 24 of November
 1682, the Treasurer caused put up the gift of his moveable escheat, as *felo
 de se*, and gifted it to Hugh Wallace, wryter, for his Majestie's behoof.

No. 822, 9 Novembris 1682.—Mr. William Moir, advocat, is admitted on the
 p. 270. Register's presentation, one of the Clerks of Seffion. (See this fully in
 my 8^o Manuscript of Seffion Occurrents at this day, pag.)

No. 823, *Eodem die*.—At Privy Counsell, Sir James Rochead of Innerleith, on
 p. 270. a petition, representing he intended to inclose and impark some ground,
 in obedience to the 41^o A&t of Parliament in 1661, and other A&ts, for
 haining and planting ; and one Borthwick, his tennent, (who had a tack
 of the land,) opposed him, therfor they would authorise him. The Lords
 appointed a visitation to be made by some of ther number, to consider
 how it might be done to the leift prejudice to the tennent, ather by abat-
 ing so much of his tack duety effeiring to his dammage and want, or else to
 give him as much and as convenient and good land elsewheir and adja-
 cent, to compensate it during the years yet to run of his tack. (*Vide supra*
 thir parties, pag. 56.)

2^{do}. Peter de Braweis pershues Sir James Dick and Thomas Young on
 this ground, that he had gotten from the Counsell the sole manufactory of
 making playing cards, and discharging the importing theirfor after the 1 of
 April 1682, under the paine of seisure and confiscation theirof, and the
 A&t gives him a most arbitrary and exorbitant power to search.—*Nota*,

No manufactoryes should be given but to Protestants, by the A&t of Parliament, in 1669, anent incouradging strangers, and yet he is a Papist.— Wheirupon he charged them with generall letters, contrare to the A&t of Sederunt in 1665, and they suspended on this reasoun, that they had not only commiffioned, but had even imported the cards before his gift took commencement. The Privy Counfell found he had no right to them ; but leift it should wrong his manufacture, they ordained Sir James Dick, &c., ather to sell them to De Braweis, (who fought 2 pennies to affix his mark on every flock of them,) if they could agree on a price, or to export them, or to keip them at home, and to sell none of them, under the paine of escheat, for a year or 2, till it might appear whither De Braweis will be able to furnish the country with that commoditie himselfe.

3rd. Sir Patrick Home, advocat, pershues Home of Linthill for a ryot, in demolishing a milne dam. Alledged, The milne was Linthill's, and he might doe with his oun what he pleased : 2^{do}. It was not a going milne. Replyed, It was built on Sir Patrick's ground of Brouns-bank, *et inædificatum cedit solo* : And to the 2^d, *Non refert*; it had not gone for 3 or 4 years, because he was in a proceſſe evicting it from Sir Lawrence Scot. The Lords fand no deeds of violence libelled, and no actuall possession in Sir Patrick's person, it not having been a going milne for 3 years paſt, and therfor affoilized from the ryot, and referred them to the Judge Ordinar for diſcussing the civill point of right betuixt them, as accords of the law. (*Vide infra*, pag. 297.)¹

13 Novembris 1682.—At Criminall Court, Mathew Hamilton in No. 825, Strathaven, as father, pershues John Leper, officer of the barony of ^{P. 271.} Evandaill, and messenger ther, for wrongous apprehending and im-

¹ *Eodem tempore*.—In Murray of Brighton and Ker's case, *supra* pag. 135, the Lords having advised the probation, found Brighton, in June 1663, was not in Ireland, but by the Records of Parliament, being then a member, he was at Edinburgh, tho it was proven he was in Ireland in May 1663, and so fand his contumacy not purged, tho he was not then the nearest air of tailzie to Anandale, (a sister being alive,) but he was holden as confess, on other passive titles libelled, as vicious intromettor, &c., and so they decerned ; but a 3^d partie cannot use this as a probation against him.

prisoning of umquhile Andrew Hamilton his fone, and for his accession as art and part of his slaughter. Leper raised ane exculpation on this ground, that he found him committing a ryot in the night tyme, being drunk, and that he, for securing the peace, carried him away to the castle of Evandaill, to imprison him their, and that he run up the stair and stepped in at a wrong door, wher ther was no lofting, and so fell thorow to the lower story, and infortunatly brained himselfe.¹

No. 826, 14 *Novembris* 1682.—This day, in the Session, was produced his Majestie's letter, making John Wauchop of Edmiston a Lord, in place of Halton.
p. 272.

Eodem die.—At Privy Counsell, [Catherine] Rig, Lady Cavers (Douglas) is conveened for resetting fugitive ministers, and for keeping conventicles, and for having a fast in hir house in July 1681, when Meldrum and Philiphauch ware debating at Privy Counsell, that Philiphauch might prevail; and the libell being referred to hir oath, and shee refusing to depone, they fyned hir in 9,000 m^{ks}., (which is neir 3 years of hir joyniture,) and imprisoned hir in Stirling Castle during their pleasure.

Item, Complaints being exhibited against Camron of Lochyell, and some of his Clan, for forning and robbing, and for deforcing, and doing violence and affronts to a part of the King's forces, who came ther to lift the cesse and taxation; the Lords ordained them to be presently disarmed of ther swords, pistolls, and skein-durks, and to be securly imprisoned. (*Vide infra* more, the 30 of November.)

No. 828, 16 *Novembris* 1682.—At the Privy Counsell, the Brewars and Tacksmen (*de quo supra, pag. 263, et seq.*) being reported, the Lords fand the tacksmen had done nothing but what was warrantable, in exacting of 4 m^{ks}. per boll within the toun for excise and imposition, notwithstanding ther gift was only 2 pennies per pint, and that in respect of the Lords of Session's decree, (*supra* in Januar 1681, *pag. 177,*) and decerned the brewars to continue to pay the same; but in the suburbs,

¹ [For the remainder of this case, see Fountainhall's Decisions, vol. i. p. 194.]

during the dependence, allowed the tacksmen only to exact 3 mks. per boll.

2^{do}. A bill is given in by Blair of Glaschin, complaining that he and his wife having been charged with lawborrows, and he not having suspended nor found caution, they had malitiously taken his wife with caption, and imprisoned her, which was *mali exempli*, shee being *sub potestate viri*, and not able to a^t for hirselfe. The Lords of Secret Counsell ordained her to be set at liberty. Yet Stairs, in his Institutions, Tit. "Conjugall Obligations," page 35 and 36, *in principio*, and my folio law manuscript D, at the 8 of Januarie 1679, page 38, Selkirk and Alison, shew cases wheir married wifes, *ex proprio delicto*, may be charged with lawborrows.

3^{ro}. *Eodem die*.—Carnegie of Cockstoun pershues the Clerk of Brichen, 1^o As not having taken the Test, tho it be a Royall Burgh, and so he is comprehended within the A^t of Parliament anent the Test. 2^{do}. For contumelious and approbrious language.

4^{ro}. The Archbishop, and some of the Magistrats of Glasgow, pershue the Deacon Conveener and some of the Trades, for factious behaviour at ther last election, and suffering them to choose a Deacon Conveener without first taking the Test, (tho they ware dispensed with at the liting and electing at Michelmasse 1681, because the Act was new made.) The Privy Counsell dismissed them on a repremande. (*Vide infra* 30 Novembris.)

5^{ro}. Ther is a complaint given in by the Magistrats of the Toune of Dundee against gentlemen, for disturbing the peace of ther Toune, in affronting the watch, and breaking ther drummer's drum, &c.

17 Novembris 1682.—At Exchequer, one Creighton seeking to No. 830, p. 273.
paſſe a remiſſion under his Majestie's hand to him for a ſlaughter, caſually committed by him 18 years ago, upon one called Gregorie, the fame was violently opposed by the defunct's freinds, in regard it appeared, by the probation tane in the præcognition, he was too iſtrumentall in it; how-ever, (tho we have not the vicenniall preſcription with us, yet) the length of tyme ſince it was perpetrat, may ſerve to expiat and obliterate the crime in ſome meaſure.—This remiſſion was at laſt paſt and exped.

Item, The Earle of Erroll having resigned his office of Shireffship of Aberdeenshire, in favors of my Lord Haddo, Chancelor, he gets this day past a pension of 100 lb. sterlinc yearly, in lieu theirof.

No. 833, 23 Novembris 1682.—The Lords of Session make ane A&t of Sederunt
p. 274. against servants in ther clerk's chambers, that they be not agents in any processses upon which they write, because it did occasion many calumnies, and falsehoods, and abstracting of papers, to the heavy prejudice of the other party, against whom they ware taken up and employed.

No. 834, *Eodem die.*—At Privy Counsell, William Loury elder of Blackwood,
p. 274. late Chamberlain to the Marquis of Douglas, and repute a bad instrument betuuen him and his Lady in ther differences, is imprisoned for harboring and resetting fugitive ministers, and conversing with rebells who had been at Bothuel-bridge, and other intercommoned persons, and receaving maill and duety from them. He was referred to the Criminall Court, to be pershued ther by his Majestie's Advocat for thesse treasonable deeds. (*Vide* more of him *infra* pag. 297, *et seq.* 31 Januar 1683.)

No. 835, 24 Novembris 1682.—The Patience and Palme-Tree ships (*de quo supra* pag. 242,) was this day advised and decided against the Capers in favors of the strangers, and finding them to be free ships, and so reducing the Admirall's decreets, which had adjudged them prysse. (See the printed processses anent thir ships besyde me. *Vide infra* 14 Februuar, thir parties.) The refusing to shew ther documents or passes to the Capers or privateers is a great presumption of ane ennemie's ship, and that it's unclear; yet it's no probation, for ships may be unwilling to shew ther passes, for fear privateers may destroy them; yet it's a ground to bring them up, and to asoilzie the privateir from dammages and exspences for so doing; but it is not a sufficient ground wheirupon thesse ships can be adjudged.—The 2 new entred Lords, Kemnay and Edmiston, declined to vote in this cause, because it was debate before ther time of admission. It was resented, and tane notice of, that Salin, then Ordinar in the Utter House, being clear for the Capers, did, contrare to

the Lords Acts, stay within and vote, and got Harcous, (who declined himselfe, because his wife was niece to Provest Binney, one of the Capers concerned,) to goe out and sit for him that fornoon.—A letter from the King, in favors of the Capers, being founded on, the Chancelor (who was against them,) told it was but *rescriptum obrepticium*, yet in other cases he will [be] offended at any who shall neglect the King's letters ; he takes that liberty to himselfe which he will not allow to others.

24 Novembris 1682.—John Falconer of Fesdo's escheat gifted at No. 836,
Exchequer. (*Vide supra* 7 Novembris.) p. 275.

Eodem die.—At the Criminal Court, one Woodburne is pannelled for being at the rebellion of Bothuel-bridge. Alledged, He had taken the benefit of his Majestie's proclamation of indemnity and pardon to all who would subscribe the bond never again to rise in armes against his Majesty, which he had *debito tempore* signed, and so was free. Answered, The subscription of his name at that bond, produced as tane by the Earle of Carnwath, having power ther, was not his ; but ther was a nottar who had affixed near the names of 100 persons to the said bond, as if it had been ther ounē subscriptions, and he had this Woodburne's with the rest ; and by this pious fraud, he had brought of and saved many of them ; tho he was not commissionat to figne for them. Woodburne offered to abide at the truth of the subscription as his. The King's Advocat offered to improve it as false ; so that heir *quaestio falsi* became *incidenter* prejudiciale, and behooved to goe before the tryall of the cryme of treason, libelled *principaliter*. It seemed od and new, to offer to improve that as false which a man abode at as truely subscryved by him ; yet a writ may be proven false against one, *quoad datam*, wher one clames benefit by it. Ther ware pregnant presumptions against Woodburne ; for his present subscription differed *toto cælo* from that other. Yet, in a short tyme, a man's hand wryt may alter much.

Eodem die.—James Alston, merchand in Edinburgh, against Sir James No. 837,
Stamfeild and Philip his sone, for 1100 lb. Scots of cloaths tane off by p. 274.
himselfe and his wife in 2 years tyme. The ground he insifted on against

Sir James, the father, was, because tho the son was major and married the tyme of the furnishing, yet he and his lady ware *in familia* with Sir James, and the son had no estat aliunde to be affected, and so the father was bound to cloath and aliment them. The Lords, on Forret's report, decerned against Philip, but affoilzied the father, because he made it appear that he had payed 5000 mks. of debts for his son, contracted by him during that very space, and that his sone was a prodigall master. Tho we have not amongs us the *senatus consultum Macedonianum*, prohibiting the lending of money to sones *in familia*.

No. 838, 28 Novembris 1682.—Sir James Stamfield of Newmilnes, *contra* the
p. 275. Earle of Midleton, now one of the Secretaries, reported also by Forret. The Lords fand it no passive title on Midleton, to cause him pay his father's debt, that he had granted a factory to William Coupar, his father's old chamberlain, to uplift the rents ; and that 2 years after his father's death, he had counted with him, and given him a discharge ; which they found no gestion ; because he stood infest in some lands before Sir James's debt, and the factory was general, without condescending, and so might be applyed to thesse lands ; and that he had a right to intromet from his mother-in-law, who was liferentrix of the lands, and stood infest in 10,000 lb. sterlinc for the behooff of hir children : which ware sufficient to palliat, cloath, and purge his intromissions, and make him only countable to hir.— It was talked, he would not have got so favorable ane Interlocutor before he became a courtier.

No. 839, 29 Novembris 1682.—In the case of Lundy and Trotter, (*de quo supra*
p. 275. pag. 203,) the Lords demurred to annull ane Inhibition which wanted the 3 Oyeffes, but boor lawfull publication ; which imports it was red ; seing it was offered to be proven by the witnesSES insert, that the 3 Oyeffes ware truely adhibit :—but this being wanting as it stands registrat, it ware very dangerous to dispense with it ; and to admit such a supplementall probation, ware to render registers superfluous : for one may buy notwithstanding of ane Inhibition, if I see it hes nullities by the looking it in the Register. This case was to-day voted, and their being 16 Lords, Or-

dinar and Extraordinar within, (besyde the Chancelor and the Lords in the Utter House, and 2 absent,) they ware equally divided, 8 against 8 : so it came to the Chancelor's casting vote, (which happens not oft,) and he craved tyme to deliberat and think upon it as a leading important case. Ther ware nyne score of Inhibitions produced which had the same want and defe&t, so that if it ware annulled, all thesse diligences would fall *in consequentiam* ; as this is ane argument *ab incommodo*, so we see as great inconveniences on the other hand to dispense with thesse ancient solemnities, (for the *Hoefum* is from the Norman law,) or to prove them *ex intervallo*, tho they signify nothing in themselves, nor tend in the leaft to certiorat the liedges. *Quid juris* if the Chancelor decline to give his suffrage ? *An in pari casu reus est absolvendus, ut actus valeat*, or are they to be forced to agree ?

29 Novembris 1682.—Sir Andrew Dick against Mr. Robert Deans, No. 841,
both advocats ; ane advocation from the Comisars of Edinburgh, wher ^{p. 276.}
Sir A. Dick pershued Mr. Robert for flandering him by stealing away
and murdering his good name and reputation, (for in law *vita et fama*
æquiparantur et pari passu ambulant,) by calling him a belted, *id est*, in
one fence a whipped, knight, for stealling some Scots records out of the
Tour of London, the tyme of Oliver's usurpation. Mr. Robert's reas ons
of advocation ware, 1^o. He was a member of the Session. 2^o. The Comisars
had committed iniquity in sustaining proces after he had debarred Sir A.
with horning. Answered, The first was a declinator, and was not com-
petent now after he had proponed peremptors. Item, The priviledge of
advocats was only in civill cases, but not in flanders, wher the Comisars
as *judices Christianitatis* ware only competent *in prima instantia* priva-
tive of the Lords, ay till they had pronounced sentence, by imposing a
fyne and the usuall censure of standing at the Church door and recant-
ing. To the 2^d, The Comisars did no wrong, for tho they repelled Sir
A. *ab agendo*, yet *ne delicta maneant impunita*, they sustained proces,
ad interesse publicum, at ther Proctor-Fiscall's instance. The Lords
heard the two parties scold a whylle upon one another in ther oun
presence for ther diversion.

No. 843, 30 Novembris 1682.—At Privy Counsell, the Laird of Lochyell, (*de quo supra* 272, *et seq.*) is fyned, as the head of that Clan, in 100 lb. sterling, p. 277. for the deforcement and violence offered by his men to the King's forces, when they came there to exact the taxations ; and 3 of them are referred to the Criminall Court, to be pershuied for ther lives, as guilty of treason, for opposing the King's authority. The Clerk-Register became caution for Lochyell. This was done (as was thought) to cause him give way to Huntlye's getting a footing in Lochaber.

2^{do}. The Magistrats of Edinburgh are called for, and commanded to give in ane exact list of all the inhabitants that are in ther toun, or have lately tane shelter ther from the country, to shun the pœnall laws against ther bygane going to conventicles, and absence from ther parish churches ; and the Privy Counsell threatned to bring in to Edinburgh the Laird of Meldrum, with his troup, he being now Captain, on the Earle of Airleye's dimission, (who hes got a pension for it,) who would vigorously execute thesse laws.

3^{to}. Nisbet and Hall, the two Bailzie's of Glasgow, (*vide supra* pag. 273,) upon a new proces raised against them, are severly reproved for ther carriage at the last election ; and ther sentence is superceeded till ther carriage be seen in the new one, and ther Counsell is ordained to choise a new Deacon Conveiner.

No. 844, 1 Decembris 1682.—At Exchequer, the liferent escheats of all thosse p. 277. ministers who had preached after the 1 of November 1681, without taking the Test, is gifted to Hew Wallace, cash-keeper.

No. 848, 7 Decembris 1682.—At Privy Counsell, ther was another pretty witty p. 278. cheat pershuied against one Carmichell, and Mr. William Cheifley the wryter, by one Muir. The case was ; one Daniell Muir, on his deathbed, was persuaded to dispone his lands of Gladstanes, in prejudice of his righteous air then abroad, to one Carmichell ; but, because he could not goe to kirk and mercat to validat the deed, they hyre and busk up a fellow to personat the sick disponer, and buckles a chin-cloath and a cap to him, to disguise him ; yet the nottar and witnesSESes doubting he was the

fick man, he affirmed to them he was he ; and so instruments are tane on his being at kirk and merkat. The air returning at last home, Carmichell, to securse himselfe, offers him some money, for a ratification ; but he getting some notice of the cheat and falsehood, hes raised a complaint theiron ; and besydes Mr. William Cheisleye's accession, ther was also notice taken by the Counsell of his drawing of papers, tho he hes not tane the Test, so that his escheat falls by the A&t of Parliament in 1681 ; but he hes tane it since. The A&t of Grace, in March 1674, was founded on as a pardon and discharge of this cheat prior theirto ; but the Lords reserved the consideration of that, to the conclusion of the cause. The wholle Counsell abhorred the villany, and ware ready to swear the witnessses for proving it, and to name a committee for examining them. But Muir the pershuar, throw the gout, not being personally present at the bar, the Chancellor stopped farder procedor, till he shoule be present the nixt day : which was a stri&t and rigorous adhæring to forme.

2^{do}. On the libell and reconvention pershued, at Privy Counsell, by Archibald Home, tennent in Dalry milnes, against John Cheisley of Dalry ; the Lords found, after the cornes are in, one cannot poind other men's goods for being on ther stubble, even tho it be within inclosures, seing the ditches should be so fensible as beasts may not win over them ; but that you may only drive them off ; (yet see the 41 A&t anent planting in 1661,) and theirfor Dalry, having driven the saids Archibald's flock of sheep throw other men's lands, wheirby they had wandred, they ordained him to pay 4 lb. Scots, as the price of each head of them that Archibald shoule swear he wanted, as if it had been a spulzie.¹

3^{do}. Alexander Mylne, Provest, and the other Magistrats of the Toune of Lithgow, gave in to the Counsell a libell and accusation against Mr. Alexander Seton ther minister, for severall imprudences, insolences to the Magistrats and peopple, and malverstations with the poor's box, wheirby his ministry was rendered odious and unprofitable their. Much pick on both sydes seemed to be mingled in this affair. It was referred to the Archbishop of St. Andrews and the Bischop of Edinburgh, which laft aymed

¹ Yet see the 41 Act of Parliament in 1661, wher inclosures are to be keipt at all tymes.

to have him transported elsewher, on some privat designe to fill that place with another.

4^{to} Ther are mutuall libells, at Counsell, betwen Captain Samuell Lockhart, brother to Cleghorne, and one Wilky, Comissar of Lanrick, accusing each other of favoring the rebels. It was proven against Wilky, when the 40 horsemen came to Lanrick Crosse, and proclaimed the King a Tyrant, he hindred some, who ware moving that the Toune should rise to apprehend them ; and mockingly said, " Let them be doing ther, we are not concerned to trouble them ; let them that gets the King's pay, fight them." Wheiron the Counsell sent him to prisone, and ordained him to be pershuied criminally, togither with Blaikwood. It was alledged by Wilky against Samuel, that a company of the rebels having met him at ane ale-house on the road, he drank with them, and wished them good successe ; and promised to follow them : which he said he meerly did to save his life, at leist that he might not be taken prisoner. The Counsell appointed the witnessses to be admitted against him ; but in regard of his knownen loyalty, (or rather his relation to the Chancelor's lady,) he, upon his finding caution for his appearance, under the payne of 500 lb. sterlinc, was left to his oun freedom in the mean tyme, during the dependance and tryall.

No. 850, 11 *Decembris* 1682.—At Criminall Court, 3 Bothuel-bridge rebels, p. 279. called Cochrane, Finlay, and Robertson, are pannelled for being ther, at leist for disouning the King's authority, and calling him a Tyrant, and refusing to call Bothuel-bridge a rebellion. They ware sentenced to be hanged on the 15 of December. Robertson said boldly to the King's Advocat, that he was maintaining no more then what he had sworne to in the Test ; for by it, they had all sworn to Knox's old Confession of Faith, and so by the [24th] article of it, ware bound to suppreffe tyranny as weell as he.

No. 852, 13 *Decembris* 1682.—At the Criminall Court, the Lords, in the case of p. 280. Cairnes, Fergusson, &c., found, that the resetting of traitors and rebels, tho it be his oun sone, (but I think this should not extend to man and

wife's muthal resetting one another, tho rebell,) if they be ather declared forfaulit traitors, or denuncied fugitive, or intercommoned, or holden and repute notorious knownen rebells, (tho it shoulde not be proven against you that you knew them to be such,) the publick notoriety being proven by witnesseſſ, (for *heir scire et scire debere æquiparantur*, and he is *in dolo qui id ignorat quod omnes sciunt*;) they found, that ſuch harboring, resetting, and converſing, was treason, and this guilt was punisheable with the paine of treason; because the 14, 15, and 25 A&ts of Parliament in 1449, and 97 in 1540, exprefly declares ſuch liable as traitors, and requires no more but that they be holden and repute ſuch. This was determined, againſt the opinion of Pitmedden and Harcouſ, 2 of the Juſtices, with an eye to make a preparative in thir poor men's caſe, to reach Blaikwood, and many others. For, by this ſtrange Interlocutor may be indangered many innocent peopple, eſpecially almoſt all the Westren ſhires, wher ſuch promiſcuouſ conuerſe hes been frequent, and near inevitable; and it can be only juſt to make this ſo odious a crime, where I voluntarly, wittingly, and willingly, without compulſion, conuerſe with one I know to be a rebell, whither he be declared or not, or at leift, that he is nottorily knownen to be one in that part of the country wher I ſtay; for they may be nottor in one part, and yet not in that place wher I dwell. And therfor, to mitigate it, the Judges declared, they meant not, by resetting, ane accidental rencounter in ane innes, or on the hie road, but a deſeribat concealling them from the law, or affiſting and maintaining them with meat, drink, and harbory, and keeping them as domeſticks or ſervants, without informing our ſelfes anent ther condition; for, if the 4 A&t of Parliament in 1681, require, for putting me *in mala fide*, that the very non-conformiſts, fanatick tennents, living upon my ground, ſhall be intimat to me, for turning them away; then, *multo magis*, will law and reaſon require my knowledge of thoſe who live elſewheir, or ſkulk and lurk a ſhort whille in my land, to be rebells, ere I can be concludit guilty of treasonable refett of them. And it may be alledged, that the forſaid 15 A&t of Parliament in 1449, as too fevere, is in defuetude. (See A&t 98 in 1487, and A&t 144 in 1592; ſee Blaikwood's caſe, *infra pag.* 297, *et seqq.*)

No. 853, 14 Decembris 1682.—At Privy Counfell, Captain John Grahame of
p. 280. Claverhouse his bill of complaint against Sir John Dalrymple, advocat,
was red. (*Vide supra pag. 267, et infra* more of thir parties, 21 Decembris,
6 Januar, et 12 Februar 1683.) It boor, that Sir John Dalrymple had
weakned the hands of the Governement, in the shire of Galloway, in
traversing and opposing the commiffion the King's Counfell had given to
Claveris, containing a power, both civil, criminall, and military, of
Shirefhip and Justiciary, of executing the Church laws against con-
venticles, withdrawing from the kirk, unlawfull baptifmes, &c., under the
pretence of his præferable jurisdiction, as heretale bailzie of the regality
of Glenlusse; and that he studied to stir up the people to a diflyke of the
King's forces their; which projects, desigues, and methods, ware the very
same with theſſe ſet on foot againſt Sir James Turner and Sir William
Bannatyne, in 1666, when they roſe and came to Pentland-hills in armes,
and have a naturall tendency to ſedition, and infiſtilling rebellion; that he
kepted diſloyall and diſaffe&tēd persons to be his bailzies and clerks to
that his regality, and did not administer the Test to them til long after
Januar 1682, contrare to the A&t of Parliament; and he imposeth mock
fynes on delinquents, not the 50 or 60 part of what the law appointed,
only to prevent Claveris fynes; and that he and his father offered him a
bribe of 150 lb. ſterling out of ther fynes, to connive at the irregularities
of his mother the Lady Stairs, hir ſifters, and others; and did iſſolently
laugh at the proclamation of a Court, made and intimat by Claveris, and
diſcharged his tennents to be preſent; and at the head Court he produced
a fa&tious instrument againſt him, as if he had exacted free quarters; and
did convocat, consult, and combyne with ſome gentlemen ther, anent
matters of State, contrare to his oath of the Test, wheirby he had incurred
the cryme of perjury; and had depraved and misinterpreted the King's
law in 1681, anent free quarters, as if the people ware not bound to fur-
nife corne and straw to the ſouldiers at all; and ſo had indevored to creat
diſcord and jealousy betuen the King and his ſubje&ts, wheirby he had
committed the cryme, and merited the punishment, of leaſing-making;
and that he had traduced and defamed Claveris to the Privy Counſellers,
as a contraveiner of the ſaid law againſt free quarters, and as one who

had usurped and assumed the King's incommunicable prerogative, in remitting and discharging, at his oun hand, Hay of Park, and others, for treason, and other crimes beyond his commiffion ; and had misrepresented him, as one who had cheated the King's Threasury, in exa&ting the fynes of heritors, and not counting for them, at leift falsely giving in a charge to the Exchequer far below his intromiffions : and all which recriminations ware contained in a libell drawen up by the said Sir John, and intended to have been given in by him against Claverous to the Counsell, and which he ought ather to prove, or else be punished as the author of ane infamous libell.

Sir John's answers being also red,—the Chancelor reprooved him for the tart refle&ctions he had theirin on Claveris ingenuity. Then Sir John urged, he might be allowed to adduce what witnesSES he had in toune, for proving some of the points of fa&t contained in his answers. This was denied him ; and the Chancelor appealed to the King's Advocat, if a diligence ever was in forme granted at Privy Counsell to a defender, to prove his defence, unles he ware in a libell of reconvention. This was to hook him to give in his counter-libell. Then Claveris witnesSES being called, and his libell, as relevant, admitted to his probation ; and Sir George Lockhart, (who was so generous as to lay aside all former privat resentments, and appear as one of Sir John's Advocats, on which fyde I also stood,) being adduced as a witnesSE, to prove that he heard Sir John Dalrymple charge some of the abovementioned things on Claveris ; Sir George answered, that such a preparative would be *pessimi exempli* to force Advocats to disclose ther clients secrets. The Chancelor thought he might be ordained to depone ; but seing Sir John Dalrymple offered to raise a libell upon the same very particulars, this rendered the examining witnesSES on that part unnecessary. Ther was much transport, flame, and humeur in this cause ; and the cloud on the late Prefident's family was taken advantage off now ; which shews the world's instability.

Sir John alledging, the peele in Galloway ware turned orderly and regular ; Claveris answered, ther ware as many elephants and crocodiles in Galloway, as loyal or regular persons ; meaning ther was none of ather ; which was a bold accusation and reflection on a wholle Shyre. And yet

the Chancellor would not allow Sir John to complean of the exacting of free quarters, in the name of any but of himselfe and his tennents only, without he had a commission from the rest of the shire, in which they durst not then joyne ; sojors getting a more favorable hearing then country gentlemen, as appeared in John Cheisleye's case, (*supra pag. 256, 260, with Clerk, &c.*)

No. 854, *Eodem die*.—Bailzie of Torwoodhead gives in a Bill to the Privy p. 281. Counsell against Edward Ruthven, and the Lady Letham, and others, for dispossessing him of the house and estate of Corstorphin, wheirof he was air of tailzie, (see this *supra 18 Septembris 1679, pag. 84;*) and therfor he craved repossession and delivery to him of the charter kift. The Lords, in regard he was dispossess by ther oun order, theirfor they refer him to pershue *via ordinaria* before the Session ; but recommended to the Lords to discuss it summarly. The pretence of ther not meddling with it was, that Edward Ruthven, then out of the country, was not cited : he is since dead, and any right he had falls in to his 2 fisters.—Torwoodhead, *alias* Lord Forrester, by his father-in-law, my Lord Salin's moyen, got himselfe repossest in the house and yeards, reserving the point of right to be discuss afterwards, (*infra pag. 319.*)

No. 856, 15 *Decembris 1682*.—At Exchequer, the late deceast Earle of Dal- p. 282. houffie's escheat is gifted to Sir William Paterson, for 1000 m^ls. owing to him by bond. So soon are men when dead forgot.

No. 857, 18 *Decembris 1682*.—At Crimall Court, Mr. James Welsh and Mr. p. 282. [Patrick] Wernor, ministers, and 13 or 14 small heritors, are forfaulted for being at Bothuel-bridge rebellion, and ther armes reversed, and torne at the Crosse of Edinburgh.

No. 858, 19 *Decembris 1682*.—The foremen and wryters in the Clerks' Chambers, p. 282. ther bill craving some mitigation of the A^t of Sederunt made on the 28 of November last, (*de quo supra, 23 Novembris, pag. 274,*) discharging them to agent in proceſſes is refused, tho they offered to forbear the

agenting in thesse processes wheiron they ware ather wryters, scrollers, or extracters ; and craved the limits of agenting might be set and explained, it being too generall and infnaring a word.

20 *Decembris* 1682.—At Criminall Court, one Alexander Home is No. 861,
pannelled for treason, in being at Bothuel-bridge in the capacity of a
^{p. 283.} commanding officer, and as a captain, and so is excepted out of the
A&t of Indemnity in 1679, being a ringleader. The Affyse found the
dittay proven, and found him guilty of the cryme forsaid ; and he was
sentenced to be hanged for it on the 29 of December. He dyed more
seriouly and calmly then many others of his persuasian had done before
him.

21 *Decembris* 1682.—The affair betuixt Sir James Turner and Mr. No. 862,
Pilans, ther competition about the lands of Craig, being reported by
^{p. 283.} Boyne, fand, that Mr. James, tho a compryfer within year and day, yet
ought not to come in *pari passu* to a share of the maills and dueties with
Sir James ; because Mr. James, having intromettet already, had got part
of his annuelrents, wheiras Sir James had got none : and therfor they
allowed him to possesse till he ware as far forward as Mr. Pilans ; and
then allowed them after that to come in *pari passu*. This was reclaimed
against by Mr. Pilans, (who had not spred his informations before report-
ing,) as not the æquality meant by the A&t 62 in 1661, seing *vigilantibus*
jura subveniunt ; and all Turner could clame ware by ane action to
repeit his proportion ; and even in that case he would defend himselfe,
that he was *bona fide* possessor, as the Lords fand on the day of
1675, Baird *et* Johnston. But Boyn favored a sojour of his oun pro-
fession. (*Vide infra* thir parties, pag. 313.)

21 *Decembris* 1682.—At Privy Counsell, Sir John Dalrymple's No. 864,
libell of reconvention was red and admitted to probation. (*Vide supra*
^{p. 284.} 14 *Decembris*.)

2^{da}. Carmichell's case mentioned *supra* 7 *Decembris* was advised, and
the Counsell fyned him in 5000 mks., 2000 to the party, and 3000 to the

King ; and fyned Mr. William Cheisley, for his apperant knowledge of the cheat, (tho not fully made out against him,) and for his drawing papers, tho untested, in 3000 mks. The pillory was too litle for such a trick. The French are so severe against such rogueries, that ther punishment is death.

3rd. Mr. John Meinzies, advocat, is ordained to be pershued criminally, for conuersing with rebels, when he was Shireff of Lanrick ; and afterwards was keipit long in prison, for ane expression escaped him, “that ther ware rebels on the Tresurer’s ground, and on the Chancelor’s lands of Tarbrex ;” tho this was not given for the cause of it.

No. 866, 23 *Decembris* 1682.—Archbald Williamson, merchand in Edinburgh,
p. 285. *contra* the Bailzies of Hamilton, (*vide supra* thir parties, page 159,) for suffering Bailzie of Carphin to escape out of ther prison. It being farder alledged, that they could not be lyable for his escape, because they ware only a brugh of barony, and the prison of the regality of Hamilton was keeped elfswheir ; and by decisions in Dury, 12 Februar 1624, Lanton against the Bailzies of Dunce, and the citations their, the brughs of baronies ware not bound to keep prisoners, and the 273 A&t of Parliament in 1597, does not oblige them to it. The Lords repelled this, in respect it was offered to be proven, that messengers ware in use to incacerat prisoners their, and that the Bailzies of Hamilton ware in use to receave them.

No. 868, 23 *Decembris* 1682.—At Privy Counsell, the Lady Dundas, daughter
p. 285. to Sharp of Houston, having given in a bill, craving ane aliment of hir husband, who had deserted hir, upon suspition of disloyalty to his bed ; the Counsell ordained the husband to be cited and heard ; but because *venter non patitur moram* they allowed hir, *medio tempore*, to intromet with any provisions ware in the barne-yeard, or about the house or doucat. (*Vide infra*, 25 *Januarij* 1683, thir parties.)

ANNUS 1683.

4 Januarij 1683.—At Privy Counsell, my Lord Castlehill, and Wed- No. 872,
derburne of Gosfoord, are admitted, on the King's letter, Privy Coun- p. 286.
ellers.

Item, One Herring of that ilk, in Galloway, having refet his 2 fones, who ware in the late rebellion of Bothuel-bridge, he came in the Counsell's will and King's mercy for it; and they, in regard of the nearnesse of the relation, wrot to his Majesty a recommendation, that he might grant him a remission: otherwayes they could not but have remitted him to the Criminal Court; tho his case be most favorable, and excepted Tit. D, *de receptatoribus latronum*.¹

5 Januarij 1683.—At Exchequer, David Lindsay, merchand in Edin- No. 873,
burgh, seiking to have a gift of printing he had got from his Majesty past; p. 286.
Andrew Andersone's relict opposed him on a prior gift from the King to be his Printer, which had most exorbitant clauses of debarring others; so that the King's taylor, tutor, &c., might as weell clame the sole exercise and monopoly of ther trades. Answered, One preffe is sufficiently able to serve all Scotland, our printing being but inconsiderable; and the right and regulation of the preffe with us, by the 27 A& Parliament 1551, is *inter jura regalia*, and so the King may give it to whom he will. The Lords referred it to a Committee; and they, on the 12 of Januar, having made ther report, the Lords fand Andrew Andersone's gift contained exorbitant clauses, restraining the liberty of printing too much, and theirfor they restricted his gift to the style, tenor, and books named in Evan Taylor's [Tyler's] gift, who was his present Majestie's father's Printer in Scotland.

¹ *Vide infra* Blaikwood's case, page 297, et seqq. *Menochius de Arbitr. judicum*, casu 347, et seq.

No. 874, 6 Januarij 1683.—The Privy Counsell declared they would not allow
p. 286. Sir John Dalrymple (*vide supra* 14 Decembris 1682) to examine witnesses
on this interrogator, whither Claveris sojors took free or dry quarters ;
but only if they did it by speciall order and dire&tion from him, (seing his
sojors ware not cited in this proces;) which was hard, he being present
upon the place over ther heads, and is in effect tacitly to incouradge soul-
diers to take free quarters, and to evacuat the late A&t of Parliament in
1681, discharging them.

No. 875, 8 Januarij 1683.—At Criminall Court, their is a letter red, approven
p. 286. and recorded, from his Majesty, allowing the Justices, as the Privy Coun-
sell should warrant them, by way of precognition, to take the depositions
of witnesses in criminall causes, before indytmnts be given, that the King's
Advocat may know whither the probation be good, and concluding yea
or not, before he begin to vex anie. This is a most dangerous prepara-
tive, laying a foundation for arbitrary procedures. For tho they must
be adduced again before the pannell in face of Court, so that if they dy
before that, ther depositions thus tane before answer and a libell, only to
lie *in retentis ad futuram rei memoriam*, cannot be made use of as a pro-
bation of the cryme ; yet, if they live, it præ-ingadges them to abide in
ther re-examination at what they once said, else they are privily threatned
to be pershued for perjury ; and so they are limited, snared, and hooked,
to the pannell's prejudice, being first examined in his absence, without his
confrontation to overaw them ; wheiras their first deposition should be de-
stroyed and brunt, they being much straitned leist they vary in a syllable,
word, or expression, differing from what they said first. Law does indeed
allow such a generall inquisition and prævious tryall by witnesses wher
their is a *fama* and a *corpus delicti*, but it is only to try out the person
suspected to have done it. But to allow such a tryall after the person is
pannelled, and a libell is given him, is unknownen, and contrary to the
laws of other countries. It's said, this very overture was brought into
the last Articles of Parliament in 1681, and was voted out of doors as
illegall. Pitmedden and Harcous, 2 of the Criminall Lords, ware looked
upon with a bad eye, because they declared ther disaffent in ther judge-

ment as to this letter ; but the Chancelor and others designed therby to facilitat ther work in reaching guilty persones.

2^{do}. Cunyghame of Montgrenan, (see his declaration, he made in the Parliament 1681, against Sir John Dalrymple and others, besyde me,) is pannelled of hy treason, for being at Bothuel-bridge ; and, on his oun confession, is found guilty by the assyfe.

11 Januar 1683.—The debate betuixt the Toune of Dundee and my No. 880,
Lord Halton, now Lauderdale, anent the patronage and presentation of
^{p. 288.} the 2^d Minister ther, being reported by , the Lords præ-
ferred the Toune's right upon ther dotation, former presentations, and
posseffion ; notwithstanding he was patron of the parson ; and the contrare
feimed to be decided, *supra* on the 18 of November 1680, for the Earle
of Haddington against the Toun of Haddington : but they differenced the
cases, for the Toun of Hadinton's posseffion was not so pregnant and clear.
However, Halton, *justo Dei judicio*, lost this, because, to make a leading
case for his oun, he had induced the Lords to decide for the Toune of
Haddington.

Eodem die.—At Privy Counsell, Campbell of Caddell is called as No. 881,
cautioner for producing one Mackilliecan, a non-conformist minister ;
^{p. 288.} and they thought to have gotten his bond forfaulted ; but he had the man
ready to fist. They remembered Caddell's opposing the Duke of York's
interest in the Parliament 1681. (See more *infra* 18 Januarij 1683.)

2^{do}. Several merchands in Edinburgh are pershued as importers of
goods prohibited by the Proclamation of Counsell in April 1681, and by
the A& of Parliament following in the August theirafter. Alledged, It
was hard to refer it to ther oaths, seing they might forget, and it might
open a door to perjury, and insnare many. The Privy Counsell declared,
they should be obliged to swear for ther importing and selling a year
back from ther summons and citation ; but, if the tacksmen of the customes,
and the King's Advocats, infisted for any prior contraventions or trans-
gressions, found, they ought only to prove it by witnessses, and could not ty
them to give ther oaths theirupon.

No. 883, 17 *Januarij* 1683.—In the debate, in the Inner House, betuen the Earle
of Leven, 2^d son to my Lord Melvill, and Mr. Francis Montgommery, for
reducing the contract matrimoniall betuen Mr. Francis and the last
Countesse of Leven, to whom the Earle is now air, upon minority and
læfion, it containing most exorbitant provisions of 10,000 mks. of a free
annuity out [of] a crazie and burdened estate during his lifetyme, tho his
oune patrimony of 50,000 mks. returnes back to him ; so that he brought
nothing to defray debt, or to compense so waft a donation. 2^{do}. It was
notorly knownen to phyfitians and others, that the poor young lady, by
infirmite and universall distempers, was altogether improper and incapable
of marriage, or conception of children, and was violented and forced
theirto by hir unckle the Duke of Rothes, then Chancelor.

2. The Lords, on the 18 of Januar, before answer, ordained both parties
to adduce before my Lord Drumcairne, (to whom they remitted it,)
a mutual probation what was the condition and rentall of the estate of
Leven, the tyme of the late Countesse's marriage to Mr. Francis in 1674,
and what ware the debts and burdens then affecting it, to the intent they
might consider if hir curators had committed any devestation, delapidation,
or dissipation, by granting irrationall hy and exorbitant unæquall
provisions, in favors of Mr. Francis, beyond what the estate could bear ;
to the end, upon report, they might modify, lessen, or rectify the matri-
moniall provisions, if they saw cause. For, tho our law does not require
præcise æquality, *inter dotem et donationem propter nuptias*, as the Roman
law did, (Novella, cap. ,) yet if ther be any disproportion, amounting
to an læfion *in re*, our law both hes and does repair such debording
advantages tane of minors in ther contrats of marriage.

No. 885, 18 *Januarij* 1683.—Mr. George Dickson, advocat in a cause betuen
p. 269. Macbrair of Netherwood and one Roome, having given in a bill reflecting
on my Lord Salin, as having done him injustice, because his brother, Mr.
Alexander Birny, was in the cause, and calling him præcipitant, &c. ;
the Lords, to vindicat ther oune authority, did cause one of ther clerks
tear the bill in his presence, and deprived him of his office ; but they re-
stored him again within 2 weeks.

Eodem die.—At Privy Counsell, Campbell of Caddell (*de quo supra* No. 886, ^{p. 290.} pag. 288) is pershued as cautioner for Grant of Glenmorieston and his tennents, who had fallen doun upon Rosse, and had robbed and driven away sundry cattell out of Sir George Mackenzie the King's Advocat's lands. The Lords found the 2000 mks. bond of cautionry was forfaulted; but superceid for 15 dayes, if he should produce Glenmorieston himselfe betuixt and that tyme; seing he offered to prove, that it was not his men, but others, who committed the depredation; only this defence was not admitted, because Glenmorieston was not produced present at the bar.

2^{do}. The Earle of Balcarous, now Shiref-principall of Fyffe, and Mr. Alexander Malcolme, advocat, his Depute, gave in a complaint against John Williamson, Provest of Kirkaldy, and the Bailzies ther, for oppoſing the Shireff to execute the pœnall laws against Conventiculars, and withdrawers from the Church, dwelling within that toun, upon the late A&t of Parliament 1681, giving a cumulative jurisdiction. Answered, The Magistrats had not been negligent, but had testificats from ther ministers of the regularity of ther peopple; lykeas, they had addressed themselves to the Counsell, and gotten a stop to the Shireff's procedor for a tyme. Replyed, The Court they interrupted was held by him after that tyme had exspired.

3^{to}. James Bailzie, and some of theſſe Affiſſers who, in 1681, (*vide supra* pag. 202) ware convict as guilty of giving ane erroneous verdict in Somervell of Urat's caſe, having been at liberty upon baill, are again committed to prison, till they ſhould pay ther fines.

19 Januarij 1683.—The King's Majestie, and the Marquis of Queans- No. 888,
berry, Hy Treasurer, and his Majestie's Advocat, against the Earle of ^{p. 290.} Lauderdale, [formerly Lord Halton] late Generall of the Mint, Sir John Falconer, Wairden, and the Officers of the Mint. (*Vide supra* of this affair, pag. 125, and 266, November 7, 1682.) To the firſt article of the ſummons, bearing that they ware liable to refound the quantities of the copper coin wheirin they had exceeded the warrands his Majesty had given them for coining Turners:—Answered, They could not be made countable for this exceſſe, because not only his Majesty, by 2 exonerations

produced, but also by the generall Indemnity in August 1679, had discharged and pardoned the same. Nather could the exonerations be termed sub or obrepticious ; and that in law all such wryts and rescripts doe tacitly bear this clause in ther bosome, *si preces veritate nitantur*; (as appears from that title, *Cod. de precibus Imperatori offerendis, ibique Perezius in Paratitulo num. 4^{to}*, and also by the Canon Law and Decretales, *Titulo de Rescriptis*;) for tho the Doctors make a great noice of the efficacy of that condition, *si preces veritate nitantur*, yet they teach us that any of the following clauses take it off, viz., ather to insert in the writ the words *motu proprio*, or *ex certa scientia*, or *ex animo deliberato*, or *ex plenitudine potestatis*; or even the *geminatio actuum* doe evacuate it ; and with us, by our style and practise, the docqueting of writs to passe his Majestie's hand, the passing them throw severall offices and sealls, the presenting them to sundry Courts and Judicators, the recording them in ther books or registers, the obtaining declarators upon some of them, are far greater checks and controllers, and more fitt to purge and obviat fraud, sub, or obreption, then thesse abovementioned inventions of the Doctors. And as this proves the validity of the exonerations, so the Indemnity certainly cuts of this pershuit : for amnesties, of all things, are most sacred, being land-marks and securities *non tangenda, non movenda*, unlesse we would desire, with that bloody Roman Emperor, Caligula, that the wholle peopple of Rome might have but one neck *ut unico ictu percuteret*, (as *Suetonius, in ejus, vita* tells us.) See the 67 A&t of Parliament in 1563, and the 10 A&t of Parliament in 1662, which are A&ts of Indemnity, and excepts from it the medlers with the publick money. But this oblivion and Indemnity in 1679 is more ample then any of them, being drawen in the most ample and comprehensive termes deviseable, as meanly designed to secure Lauderdale and his party, for the Hyland army that they sent in upon the West in 1678, and ther other exorbitancies ; and the pardoning the rebels who rose at Bothuel-bridge, was but a sham and a culor to draw on the other, and gave it but a fair ryse, and came in meerly as a pendicle by the by ; and yet now, *justissimo Dei judicio*, it does not now protect Halton when he founds upon it, and makes use of it. But yet I find the Lords in Fairy and Ker's case, (pag. 123, 13 Februarij

1680,) and in Mr. John Kincaid's case, (*Supra pag. 247, 1 March 1682,*) fand, that the said indemnity did not defend against restitution, and the civill effects of damage and interest, but only from punishment; and that the *vindicta privata et publica* discharged by the indemnity differed from restitution, because the *vindicta privata* was the confiscation of goods, and the *publica* was the inflicting the personall punishment; which two ware only remitted by the A&t of Indemnity, but no wayes simple restitution. A discharge that Sir Walter Seton had got from the King of his intromissions as collector, did not hinder, but the Exchequer forced him to count again; and none will affirme that this Indemnity in 1679 would defend the Tresurer, Tresurer-depute, or Sir William Sharp as cashkeeper, from counting.—The Lords, immediatly removing the parties, advised this point without written informations, and repelled the defences, and fand the superplus of the coinage more then was contained in the King's warrands, (tho it could not be instruced from the Checker Rolls or otherwayes, that ever that superplus was counted for in Exchequer, or lookt on as any part of his Majestie's revenue,) did not belong to the Officers of the Mint, but to the King; and that the exonerations in ther narrative ware but relative to the warrants, and so could not exceed them, and that the A&t of Indemnity did not extend to this proces, which was not pænall, but *rei vindicatio* only, and for restitution. They behooved to vindicat the legality of the report they had made to the King this last summer, upon his commission against Halton, and he most rather suffer then they be affronted, as if they had misrepresented or disguised the truth of that matter to the King. The words of the Interlocutor ware, “ The Lords repells the first alledgeance, founded on the A&t Parliament James 2^d, and finds it extends to the Mint; as also, repells that alledgeance bearing that the profit of the copper is a perquisit of the defenders' office, as a part of ther fee, in regard the King's Advocat insists only as to the profits of the quantity of copper coyned more then was contained in the warrands; and repells that alledgeance founded on the exonerations, and finds thesse exonerations extends no farder then to the quantity allowed by the warrands, and not to the malversation in relation to the quantity exceeded;—and repells

the alledgeance founded on the A&t of Indemnity, and finds the same cannot secure the defenders from being liable in restitution, *in quantum locupletiores facti sunt* by the profits of the quantitie of the copper coyned more then was contained in the warrands."

2. The nixt day, being the 20 of Januar 1683, the King's Advocat represented to the Lords, that how far they had made profit and benefit, could not be the rule ; for what if it ware not extant, but they had spent it in living hy, or in playing and drinking ? wheiron the Lords expunged thesse words out of the Interlocutor, *in quantum sunt locupletati* ; and made them simply liable, whither *in rem versum* or not.

Tho this debate and its Interlocutors took up severall dayes, yet it will not be fitt to divide it, but hear to give it all togither.

3. 23, 24, 25, & 26 *Januarij* 1683, King's Advocat against the Officers of the Mint.—It being farder alledged for Lauderdale, and the other Officers of the Mint, that no more of the copper coin could be adjudged to belong to the King but a 12^t part, (which is his proportion he hes of the silver,) and this also with dedu&tion of the price of the copper, the exspence of the working, and the fees of the work men ; which being defaulked, the free excrescent and superplus profits, over and [above] all thesse abatements, will be but inconsiderable. Notwithstanding wheroft, the Lords fand the wholle copper coin made and stamped, more then the Officers of the Mint had his Majestie's warrands for, did intairly and *in solidum* belong to the King, without any allowance to be deduced of it for the metall, matter, or forme. 1^o Because they esteemed it *res furtiva et peculatus pecuniae publicae* : but if so then, if not poenall, yet it was *mixta, partim rei persecutoria, et partim paenalis*, and so in part pardoned by the Indemnity : Which forced them to run to a 2^d ground, viz., that it was the King's, *jure specificationis* ; the King's stamp and character being pressed on it, he became *dominus totius tam materiae quam formae* : but heir *materia* being *potentior et prædominans et reducibilis ad priorem formam*, *dominus materiae* became *dominus totius*. 2^{do}. By the said Roman law, in that *modus acquirendi per specificationem*, the ouner of the matter had ane action competent *ad estimationem et præmium materiae suæ vindicandum*.—This swerving from the prior Interlocutor, and not being intelligible in law ; the nixt day, the cause being again called, it

was insisted for the Earle of Lauderdale, that he behooved to have deduction of the matter of the copper; for *eslo*, the induction of the King's irons and imprese transmitted the property to the King, so that it might not *de jure*, in prejudice of the King, be reduced *ad priorem materiam*, wherby *præstantia imaginis et potentia formæ trahebat ad se materiam hic*; yet it was alwayes with the burden of the price and value of the matter, seing *Rex non debet locupletari ex jactura alterius*; and the Indemnity pardoned the criminall delinquency on it. The King's Advocat being beaten from the notion of specification, ran to that of accession, that it became the King's, *jure accessionis*, like a board yielding to the picture drawen theirupon, (§ 34, *Institut. de rerum divisione*,) and he being *in dolo* to apply the King's irons to more metall then he had warrand for, he ought not to reap benefit *ex suo delicto*. Replyed, That decision of Justinian's was singular *in pictura ob præstantiam artis*, and yet it still went *cum onere prætij tabulæ*: yea more by the Roman law, *etiam in persona prædonis benignius visum est deducere impensas tam utiles quam necessarias*, and he only lost the voluptuary ones, (C. 38 et 39, D. *de hæreditatis petitione*, l. 22, C. *de rei vindicatione de harum impensarum deductione*.) The Lords being straitned, altered doun right ther former Interlocutor, and found the Officers of the Mint ought to have allowance of all copper stamped by them before the A& of Indemnity 1679, (for after serious consideration, they durst not make too bold with the lousing of this A& of Indemnity, because they knew not [in] what neid they might stand of it or the like A& themselves, ere they had done with ther part of the game,) but fand, whatever copper was coined since the said Indemnity was the King's, without any defaulcations, *confiscationis jure*; and ordained the Officers of the Mint to condescend on the quantity prior to the A& of Indemnity; wherby they designed to elicit a confession, that they had exceeded ther allowance, which would hold them in a probation; as also to prove the value of the pound or stome of copper; and wold not allow them the current prices it was then giving, but only what it really stood them; and for the expences in coyning, allowed them to defaulk whatever wages they ware yet resting to the artificers and workmen, but refused to allow them what they had already payed.—To the pre-

judices arising by a superfætation of copper coin marked by me, in my other folio Law Manuscript, marked A. at the 16 day of November 1676, folio 264, (when Abbotshall opposed it, and now, *ex eventu*, it had been telling Halton he had not then gotten his will,) we may adde, 1° That forrain commodities cannot be bought with it; for strangers will not take it. 2^{do}. Being small and carelessly keiped, the halfe of it in few years comes to be lost, so that the halfe of the Turners coined since the King came in, if they ware called for in now, are not extant. 3^o The Babies [bawbies], or 6 pennie pieces, force and tempt us to buy more of small commodities then we need, and they who formerly bought but a Turner's worth of pins, spice, &c., are now in a manner forced to buy a Babie's worth, the Turners having become very scarce. Amongs the Venetians, I find it is death to apply one pennie of the publick money to ther oun privat stock or use.

4. Then the King's Advocat infisted on the 2^d article of the libell, (see the large Information besyde me,) anent his refounding the profit of the bullion; and tho Lauderdale alledged, that the Master of the Mint, by his office, gift, and bond of caution, was liable for that; yet the Lords fand the Generall of the Mint, as Controller of all the rest, liable for his negligence and omission, equally and principally to the King, and not only *subfidiarie*, reserving him his releiff, as accords, against the Master. And for this ther was cited the 8th A&t of Parliament in 1669, anent the bullion, mentioning the Generall as weill as the Master, and the *Lex* 9, § 8^{ra} D. *de administratione rerum ad civitates pertinencium*, wher *curator tenetur nomine collegæ si prohibere eum poterat*. Yet I find, *Lex* 11, 12, & 13 D. *ad municipalem*, make him only liable *ordine discussionis prius servato*; and all cautioners for administrators have the priviledge not to be conveined *in 1^o instantia*, till the principall be first discust. This Interlocutor of the Lords, finding the Generall liable for all the malverfations and omissions of the inferior officers of the Mint, was grumbled at, for they had not ther commissions from him, but from the King; and he could be in no worse case then a tutor or overfier, *qui tenentur tantum de dolo lato et levi culpa*; yet I find *mandatarij*, (among whom are also contained they who have commissions for offices and trusts,) are liable in

law *pro culpa levissima*; but that most only be understood of ther ounē, but not of the *culpa levissima* of thesse under them, tho they be answerable also, *ex quasi delicto*, for ther faults. And on this rule, masters are made liable for ther tennents and servants, and Shireffs for ther deputes; (see *Statuta Davidis 2, cap. 30,*) parents and husbands for ther children and wives, in some cases. The Generall is made liable for the inferior officers' malversations, not only because his knowledge, connivence, and command is presumed, but he shoule have impeded and discharged them to have coyned more then was in the King's warrands, and 2 copper journeys, and should have revealed it, and not have concealed it, and divided the spoill betuixt them; *et Titulo Cod. de falsa moneta, etiam consciij puniuntur.* As to the point of releiff among themselves, if they be all proven to be delinquents and *in dolo*, and to have malversed in ther trusfts, this ought to cut of all releiff, as is elegantly decided in the case of Tutors, *l. 1, § 14,* D. *de Tutela et rationibus distractis,* (which may be urged against Eleifton's proces against his contutors,) and if one of them be dead, (as in Mr. James Falconer's case, who is conveened for his father the Wardeyn's malversations,) such actions *de dolo quæ factum puniunt, non dantur contra hæredes*, wher it was not establisched, or Litiscontested against the defun&t in his ounē lifetyme, *l. 9, § 1,* D. *Quod falso tutore gestum est.* (Yet I find Capers, tho decerned to restore ships or goods unwarrantably seized on and taken, they have releiff amongs themselves, tho all decerned *in solidum*: See Captain Smeton and Mr. David Dewar, the advocat's case, about Samuel Souton's ship, in my folio Manuscript D, at the 25 of June 1678, page 22: *Item,* the 4th. Manuscript, A 7, page 17: *Item,* Stair's Law Institutions, Title 12, page 225.)

5. Then the Lords, after debate, advised the 7th point or article of the libell, about the profit they had upon the exaltation and crying up of the marks lately in 1680; and fand for all bulzeon, silver coyned or uncoyned, they had lying besyde them in the Mint-house at the tyme of that A&t, ther was due to the King the 8 pennies they gained on each mark of it, and ordained them to restore it; and for what bulzeon they got in since the said A&t of Counsell, seing they gave the merchand 55 shillings 10 pennies for each unce of bulzeon they brought in formerly, and gives

him 58 shillings 8 pennies since that Act, that they can be countable to the King for no more but the summe of , unlesse the King's Advocat can prove they compounded with the merchand for lesse then the said 58 shillings 8 pennies, and whatever they got dounre of it, finds it belongs to the King.

6. Then the King's Advocat and Sir Patrick Home infisted on the 8th article, anent the melting dounre of the dollars and ducatoons, to make bulzeon of ; the Lords, (notwithstanding the 249 A& 15 Parliament, Jac. 6, in 1597, which they fand in desuetude as to the current coine, tho forrain,) fand, that the melting dounre of dollars was unwarrantable *ab initio* ; and of ducatoons, only since they ware cryed up, as paffing money in 1680 ; and that the King most have the same profit on them, as he would have had of imported bulzeon, viz. the 12 part ; tho Lauderdale alledged it was only the 30 part ; and found, that not only the coyne bearing the King's imprefse, but that no forrain coyne that pafses as current, ought to be melted dounre at all.

7. Then after debate on the articles anent the remedies of fyneſſe and weight, the Lords fand a grain above and below the standart of weight, and 2 grains above or below 11 penny fyne, as the standart of the intrinſick value and fyneſſe, ware allowed only as a latitude to work on, wher casually they fell above or under, because it would be ane unsuperable labour to be precise ; but fand them culpable, the King's Advocat proving they wrought on the remedies beneath standart, as a constant advantage, fo that when they came to trone, or weigh a mark peice, if they fand it exact weight, they would pair, raze, and scrape a grain of it, till it came to the remeid ; which fraudulent pra&tise being proven, the Lords fand them liable for reſtitution of theſſe grains ; and finding the article of John Falconer's bond to Alexander Maitland was made up of thir remeeds, they refolved to confiſcat the ſaid summe to the King.

8. The King's Advocat therafter infisted againſt Mr. James Falconer, that he, as ſucceſſor *titulo lucrativo poſt contractum debitum*, moſt be liable for his father's part ; which he did urge not only for all deeds done by his father as Warden, before he gave him a diſpoſition to his eſtate, but even for all deeds after, because he being intruſted by the King with his

money, he becomes debtor from his first entry unto his administration and office, and any disposition he make afterwards to his eldest son of his estate, most be repute fraudulent, and ought not to prejudge the King's tacite hypothec, till he be payed of his oun, which is agriable to law, and the Fisk's priviledge. (So Ant. Peregrinus is clear in it, *libro 6 de jure Fisci, cap. 6 et 7, pag. 662 et 687*, and he cites laws for it.) Yet this will exceedingly mar commerce with such publick officers, and is, on the matter, ane interdyting of them.

9. Then he insisted for the annuelrents of thir summes arising from ther delinquency, and *mora* in not paying in what they ware owing, the King's prejudice resulting therthro, and therfor annuel is due heir, *nomine damni et interesse*, tho ther ware nather law nor pa&tion to infer annuelrent ; and this is also another priviledge of the Fiscks. But ther are more principall summes decerned already, then all the Generall and the other officers of the Mint ther estates are able to pay, (if his Majesty doe not remit some-what of the rigor;) so that they neid not insist for annuelrents, unles it be for exemple, and to strick terror in others ; and its impossible that any can manadge the Mint office, if they be so strikly searched. But it will be the Earle of Stafford's case, who was found guilty, yet with one breath it was declared it shold not be drawen into a preparative.—However, let this case of Halton's stand as a great instance and beacon of the flux and inconstancy of all sublunary greatness.

10. On the 2^d of February 1683, the Lords fand my Lord Maitland, then newly come home from London, liable as conjunct Generall with his father, tho he never meddled ; because he ought to have supervised, and his being adjoyned when he was so young as not to be able to officiat, was his father's fault.

In this cause, Halton's too much debate and opposition made the decret the stronger ; and irritated the Chancelor so, that Halton having taunted Sir Patrick Home at the bar, he was reprooved for it, and he was advised not to say any more, but to leive them to do what they pleased ; for thesse Lords (as Forret, &c.) who swore by him formerly, ware so cowardly as not to appear for him, but voted as cleverly against him as any. They thought to have hooked him in the debate, if Sir John Fal-

coner was bound to releive him, and to have freed Sir John ; but Halton smelling it, declared he had no proces of releiff against him as yet, and would not insist now. It may be doubted, if the Chancellor or other Lords who ware on the first commission, and had already given ther opinion ther against him, might not in law have been declined as prejudicat, and pre-engadged.—Some of the votes against Halton, ware carried only by the Extraordinar Lords. *Quæritur*, If such Interlocutors may not be suspected as not altogether consonant to law, the Extraordinars not being bred lawyers ? In this proces, the Lords followed the ancient summar way of advising processes, by debating and discussing the relevancy of one point, before they heard another, and removing the parties presently, without written informations, and giving them a distin& Interlocutor on each of them.

11. The A&t of Litiscontestation in this Mint-cause being extracted, the Lords, on the 20th of February 1683, appointed Castlehill, Boyn, and Drumcairne, to receave the probation, and to peruse and prepare it to the wholle Lords, and theirin to take the help of Lieutenant Generall Drummond, Gordon of Gordonston, and Bailzie Baird. This was thought od, to adjoyne assessors to the Lords ; but the matter was somewhat out of the road.

12. 20 Martij 1683.—This tedious proces was at last advised by the Lords ; and they fand it proven by John Falconer Warden his deposition, that ther was 17,000 stome weight of copper coyne, tho ther was only warrant for 10,000 stome, (yet it was objected, that John immediatly retracted and amended his deposition, but they would not write it ; and that he was only *testis singularis*, and that it was not tane *in judicio ordinario*, but *in summario* on the King's commission—see *alibi* of this ; yet it was alledged, that he being a party, knew best what was coyned ;) and fand, that Halton had taken 600 lb. sterlinc from Sir John Falconer, to get Sir John's account of bulzeon past and cleared ; which they decerned Halton to pay back to the King as *caducum*, being a bribe, unles he condescend on another cause of his giving him it : And fand the summe they ware all lyable in conjunction to the King, was 72,000 lb. sterlinc, for which they decerned them all *in solidum*. (*Vide infra*, the King's

determination upon this decret, sent up to him at the tent day of May 1683 : it's page 322.)

20 *Januarij* 1683.—Maiffon, the bankrupt, was this day seized on and No. 890, § 2, imprisoned, and his books, for discovering the fraud against Street and ^{p. 296.} Jackson, are sealled up. (See Mackeinzie's observes on the A& of Parliament in 1621, anent this Maiffon, and of summar warrands to apprehend bankrupts.)

3. The Chancelor and Privy Counsell granted the like summar warrand for securing Alexander Tait in Leith, the leid ure man, at the Lady Hopeton's instance, because he was suspected of going to flee, tho ther was no caption against him : so he was put under caution.

25 *Januarij* 1683.—Major James Wood in Edinburgh, against Murray No. 892, of Dunypace, or Spot, reported by Pitmedden. The Lords, before ^{p. 296.} answer, ordaines the parties proctors to condescend on the parties commoners at the transfa&tion anent the absolut disposition of the land of Spot to Murray the suspender ; and ordains them and the witnesses insert in the disposition to be examined what was *tractatum* betuen the parties in relation to this matter ; and ordains the Lord reporter to hear the parties proctors upon this point, anent Wood, Bischop of Caithnesse's filling up of the blank in the bond ; as also recommends to him and my Lord Drumcairne in the meantyme to indevor to setle the parties : who agried them on a summe.—It's not to be presumed that the Bischop, by his consent to the 2^d disposition, designed to prejudge himselfe and his daughter of what was formerly provided to him by the former laird of Spot.

25 *Januarij* 1683.—At Privy Counsell, Mr. John Hay of Woodcock- No. 893, dail, Shireff-depute of Lithgow, is imprisoned and suspended from his place, for his interfairing, competing with, and opposing the commision my Lord Lithgow had from the Counsell, for punishing phanaticks.

2^o. *Item*, the Lady Dundasse's bill (*de quo supra* 23 *Decembris*) against hir husband's friends, craving ane aliment, was debate : The Counsell fand, tho by the grandfather's settlement of the estate, Ralph was absolutly

put in the discretion of 13 freinds, ather to give him the haill lifrent, or if he misbehaved, to deprive him simply of fee, reversion or lifrent ; yet nather the goodfise nor freinds could *contra dictamen naturæ* refuse him ane aliment, till first they had, by the sentence of some competent Judge, declared him unworthy of thesse common benefits of mankind, (such as bread is,) and therfor they, for the freinds rashnesse, decerned such of them as subscryved the discharche of the reversion, and who had absolutly establisched the fee of the estate in Walter the 2^d brother's person, without reserving any aliment to Ralf, not yet found guilty, to pay the said aliment of 100 lb. sterl. yeirly, *pro rata* and *partibus virilibus*, amongs them ; and divides it in 3 parts, viz., 600 mks. to the Lady for hir selfe, 600 mks. to hir for hir children, and the other 600 mks. to the said Ralf himselfe, seing he refused to cohabit with hir ; And allowed them ther releiff of Walter, on whom they had setled the fee of the estate of Dundas ; and allowed such of the freinds as had not subscryved the said discharche of reversion, when they should be charged on this decreet for payment of their proportionall parts, to suspend without caution or confignation, they instru&ting ther hands is not at the said discharche. The Counsell did this, not only in regard the freinds had contemned a prior order of Counsell, modifying to Ralf a 100 lb. sterl. ; but they also thought this would be the most effectuall way to cause the freinds (who had seduced and drawen him away from his wife, on pretence of hir unchastity) bring him back again, when they fand ther plot of being rid of hir did not succeid ; or else force them to raife a divorce, if they could prove adultery on hir.—This Interlocutor was afterwards stopted, and referred to a Committee, who restrietted the summe to 1200 mks. in all.

3rd. Mr. John Philp, late minister at Queansferry, is imprisoned by the Counsell, for treasonable expreſſions uttered by him against the King and Duke of York, calling him a Papift, and that they intended to introduce Popery. (*Vide infra* more, page 313.)

Item, Mr. John Spreul, once a Clerk of Seffion, is brought in prisoner to Edinburgh, upon suspition again. See him incarcerated *supra* in May 1679, page 69.

26 Januarij 1683.—Collonell James Meinzies is imprisoned by the Exchequer, till here pay 9000 mks. given him, in *anno 16*, out of the King's Treasury, to build a fort at Innerlochy against the Highlanders, with the annuelrents since the refait of it, seing the fort was never built; tho he produced my Lord Argile's refait of the money: but reserved him action against Argile and Lawers the other cautioner as accords of the law.

27 Januarij 1683.—Sir John Harper, advocat, is committed to the Castle of Edinburgh, in respe&t it was deponed against him, he had converſed with one Laury a rebell. Every gentleman gets not that credit of being ſent to the Castle, but are put in the Tolbuith. This is like the old way of charging men to enter ther persons in prison, ſuch a day. *Quæritur*, If Duke Hamilton, Sir John's conſtituent in the Shireſhip, ſhould be anſwerable for his malverſations in that place and capacity?

Their is also a proclamation, over the Croce of Edinburgh, againſt James Stewart, and ſundry other fugitive Scots, living in Holland, ſummoning them to come home and anſwer within fifty dayes; and diſcharging any to keip correſpondence with them, by letters or otherwayes, under the paine of rebellion.

Eodem tempore.—The Hy-Treasurer emitted ane order, that whoeuer had signators of lands, escheats or the like lying unpaſſed, (which many did, because they would not take the Declaration put to them,) if they did not come and take them out, and compone for them within a moneth, they ſhould be lacerat and deſtroyed, tho they ware even paſt his Majeftie's Royall hand, or contained Novo-damuses; which he now refutes to accept of, (ſo cautious is he,) without a ſpeciall letter from the King.

Item, At the ſame tyme, the Exchequer ſets a tack, for one year only, of the park of Halyrudhouse, (which they took from Sir James Hamilton and the Earle of Haddington, for refuſing the Teſt,) to widow Todridge, for 5000 mks. by year; which is 1000 mks. more then it payed formerly.

31 Januarij 1683.—William Laury of Blaikwood (*de quo ſupra pag. 274*)

is brought upon the pannell at the Criminall Court ; the dittay found relevant ; and his defences repelled. Tho this took up severall dayes in Februuar, yet as I did in the Mint proces, so heir I will conjoyne the wholle matter togither. His dittay ran on his conversing with and resetting Rebels that had been at Bothuel-bridge, and was founded on the 15 A& of Parliament in 1449 ; A& 97 in 1540 ; and A& 144 in 1592. The defences proponed by Sir George Lockhart for him ware, that the libell was irrelevant and inept, being *generalis, vagus, et incertus*, not condescend-
ing on the particular tymes and places of the converse, and persons with whom ; and cited *legem 3^{am}. D. de accusationibus* exprefly for this. 2^{do}. The forfaids A&s of Parliament meant only witing and wilfull converse with and concealling of them whom they knew to be rebels and traitors, and who ware intercommoned, (that being only the badge by which men ware prohibited and put *in mala fide* to converse, with them, as if they ware infested with the plague,) and that the Popes, by ther bulls and excom-
munications, had put wholle kingdoms under interdicts ; but ther ware never such generall prohibitions as thir allowed by any lawyer, or any ever pershued in Scotland upon such a head as this before now ; which would reach all the westren shires, and many elsewheir. 3^{to}. By the 29 chapter, Statut David 2^d, the refetters of malefactors cannot be per-
shued till the principalls be first convict. For I put the case, Blaikwood should be now found guilty of resetting such a rebell, and afterward, that person should be tryed and found innocent, *quid juris* then ? the sentence against Blaikwood would infallibly be injust. Notwithstanding of all which, the Criminall Lords (being overawed) did find the dittay relevant to infer treason ; (tho the 97 A& in 1540 cited, inflicts only confiscation of moveables and death, but the 2 other A&s are more generall ;) and repelled his defences ; and found it relevant to the Advocat to prove he had conversed (tho it was proven he was not heritor, but only tutor and chamberlayne to his grandchild) with Rebels, ather intercommuned or denunced, or nottor, or habite and repute so. Tho it was offered to be proven, that thesse called Rebels, had conversed openly and avowedly in all places, for 2 years before, without molestation from the King's forces, and ware repute free liedges and purged. In this cause the King's

Advocat brought in severall witnesses prisoners, by a squalde of the King's guard, which had not been usfully practised before.—Tho this Interlocutor was of most dangerous consequence, yet it could not have happened on any that was lesse regrated, or worse beloved then Blaikwood. However the Chancelor and Statsmen have overruled the Judges to this decision, yet it is upon a very politicall designe (as I suppose); thinking this will prove one of the most effectuall wayes to banish all thesse Rebells out of Scotland: for men being thus frighted to converse with them, they will nather get harbory nor resett, which will quell and clash all future risings in armes, wanting incouradgement, and Scotsmen are not governeable without such usage, so that it may be of great advantage for the future peace and tranquillity of our country.

5th Februarij 1683.—Blaikwood appeared in the Criminall Court again, wheir they infisted on the grounds of his exculpation, viz., That he was not heritor but only tutor for his grandchild, and did not reside ordinarily in the West but at Edinburgh, wher it could not be pretended that thesse persons for whom he was accused, ware nottorly knownen to be Rebells; that one of them had a passe from the King's Advocat, whom he had dismissed for lack of probation, and that he had pershued removing against another of thesse rebels before the Sheriff, and had ejected him out of his ground; which is all that the late A& 4 Parliament 1681 requires. Yet thir ware all repelled; and the Justices found he should have presented him to justice as a rebell; and the removing him of the land was not eneugh.

Then, on the 6th of Februar, he was again brought to the pannell, and he came in will, and submitted to the King. Theirupon some of the Justices ware sent to the Chancelor and some of the Privy Counsell to see if they needed lead probation against him, since he had confess; but they ware appointed to doe it, to give ane evidence, that what they had alledged was not calumnious; wheirupon the witnesses ware led, (ther former depositions that had been taken being first brunt in the fyre, leist it should be esteemed a præ-ingadgement,) and severall acts of reset and converse ware proven against him; and the Affise being inclosed, returned him guilty.—I heard some charge Sir George Lockhart with ane

omiffion, in forgetting to propone on the 126 A& Parliament 12, James 6, in 1592, wher only denuntiations at the mercat croffe wher parties dwells, puts the liedges *in mala fide* to refet, but not a denuntiation at Edinburgh ; which was the case of Blaikwood's rebels ; for this was a most important and materiall point.

7 Februarij.—His sentence was pronounced, viz., That he should be taken to the Croffe of Edinburgh, on the 28 of Februar nixt, and his head ther to be severed from his shoulders, and all his lands and moveables to be forfault to the King ; and his armes ware reversed and torn at the Croffe with sound of trumpet.—They gave him thir 20 dayes tyme to apply to his Majesty for a pardon, if he could obtain it : but without recommendations from our Court heir, he could not exspect to come speed at London.

This seeming rigorous procedure with Blaikwood, who had been very wary, cautious, and circumspect in his walking, (tho of disaffected principles,) frightened and allarumed many ; for they considered, that ther ware few in the 6 westren shires but ware more guilty of this sort of converse with thosse who had been at Bothuel-bridge then he ; and now it was apparent that the Chancelor and present Governors ware resolved to put thesse laws vigorously to execution. And they did not stand to blame Rothes, Lauderdale, Halton, and the other late Ministers of State, who did not poize the execution of the laws and governement with ane æquall hand, but sometymes relaxed and flattered the Fanaticks, as if they had been afraid of them ; clapping ther heads ; and at other tymes with the Hyland host, and the Bond and lawborrows, would not [only] persecute, but even extirpate them :—and it had been telling that country that my Lord Stair, Craigie, &c., had not opposed the taking that bond against Conventicles in 1678 ; for it might have proven ane effectuall medium of keeping the commonality in aw, ther masters once being bound for ther good behavior not daring give them the leift connivence. However, if Blaikwood's Interlocutor be designed to be made a leading pratique against all concerned, the King may get forfaulted lands eneugh ; and the Indemnity in 1679 will happen to doe more hurt then good for quieting the country ; so that by this Interlocutor of Blaikwood's, ther is

almost ane absolute necessity of a new Indemnity ; (which came in April, clogged with the Test, and fundrie other restrictions, when the Circuit Court was appointed.) For that pardon coming so suddenly after Bothuel-bridge rebellion, it took away the terror and apprehension of it, so that scarce any stood in aw to take home thesse persons for tennents or servants who had been at Bothuel-bridge, without examining more whither they had tane the bond, which was the condition of that Indemnity ; and so this promiscuous converse is like to prove now a great snare ; and ther are 20,000 men in Scotland ingaged in this guilt without any disloyall purpose, but meerly thro inadvertency, and pitty and compassion to thesse bodies.

On the 8^t of Februar, Blaikwood gave in a petition to the Privy Counsell for a recommendation to his Majesty for a remission ; but it was not judged humble and submissive eneugh, and so it got no answer.

On the 12 of Februar, the Marquise of Douglasse gave in a bill to the Counsell, craving a prorogation of Blaikwood's tyme of execution, because he had been his Chamberlain thesse 10 or 12 years bygane, and had not given him in his accounts, and it would require some tyme. The Lords waved this bill, but ordained my Lords Dundonald and Abotshall to take a view of the counts. Then, on a new bill given in by him on the 22 of Februar, they prorogued and continued his day to the first Friday of Aprill ; and then, on ane new application, to November 1683.

This case of resetting Rebels is much agitat by the Doctors, and they make resetting *frequentativam*, and so not a fingle act, and ane abstracting them from justice and a concealling ; which is a step and degree farder then naked converse. See *Jac. Menochius de Arbitrariis judicum Quæst. casu 347 et 348*, wher a father *receptans filium bannitum*, or one *receptans ignoranter vel ut caupo* are excused. Item, *casu 530, 548, 551*, wher the favorers and refetters of hereticks are punished.—This cryme of resetting traitors hes been little noticed in Scotland as treason. I find in the unprinted A&ts of Parliament in 1455, James 2^d, "that none reset the Earle of Douglas ;" and by the last printed A&t in 1540, King James the 5th, it gives a generall pardon to all but them who corresponded with the Earle of Angus and his brethren, only since they ware forfaulted

and not before. Now it was easie to shun the falling into that cryme, being few and eminent persons, not ane obscure rabble, as thosse manie thousand rebels at Bothuel-bridge ware ; and since 1540 till now, the rigorous pershueing of this cryme of reset hes sleiped till this proces :— But reason of State may prevaill over all this, wher under the pretence of a&s of common humanitie, they support and keip life in the rebellion, so it cannot be extinguished without punishing all. And the crooked tree most be bended contrare to the other side, to bring it to a rectitude, and *ubi crimina frequenter graffantur, tunc exacerbantur pœnæ.* But *distingue tempora,* and this cryme of reset is ather more or lesse according as the effects and consequences of it are more or lesse influentia or pernicious to the State.

No. 903, 1 Februarij 1683.—At Privy Counsell, John Black, tobacco-cutter,
p. 300. pershues long William Johnston, merchand in Edinburgh, (who shortly after this broke,) for wrongous imprisonment of him, after he had given him a discharge of the debt, and tearing the said discharge meerly upon the pretence that he said it was false. William alledged Black did rashly tear it himselfe. The Lords appointed a committee to take a conjunct probation.

2^{do.} The King's Advocat, and Hempshied his depute in the Regality of Dalkeith, against the Deacons of trades and ther electors in Dalkeith, for accepting, electing, and exercising, without taking the Test, contrare to the two A&s of the late Parliament in 1681, anent the Test, which mentions brughs of Regalities, such as Dalkeith is, as weill as brughs Royall ; tho they contended they ware not obliged. The Lords so far tolerated ther bygane error, as to ordain the pershuar before answere to prove they ware erected in deaconries, and incorporat ; and then ordained them, betuixt and that day 8^t dayes, to take the Test, otherwayes to be fyned.

No. 906, 7 Februarij 1683.—Sir Arthur Forbes, Vicount Granard, Lady
p. 301. Margaret Hay, and the Lady Berfoot [Bearford], gave in a bill against George Seton of Barnes, complaining he had vitiat a principall agree-

ment, or decreet-arbitrall past betuixt his father and him in 1658, by making 1800, 1600, and *his* estate, *this* estate, and adding the words *rents*, which corrupted the fence. Answered, They ware not vitiations, but amendment insert in it at the very beginning, by the arbiters. The Lords having considered the bill and answers, they recommend to my Lord Register, and my Lord Reidfurd, to hear the parties anent the vitiation of the said decreet-arbitrall, and upon the haill points within controverted; and for that effect grants warrant to the Comisar Clerk of Edinburgh, to exhibite and produce the principall decreet-arbitrall in quæstion; and to the Clerks of Seffion, and Keepers of the Registers and Records to exhibite and produce before the saids Lords, any grounds or warrands, and books that can clear the wholle matter: and ordaines the saids Lords to make report. (*Vide infra pag. 319.*)

9 Februarij 1683.—The bill of suspension presented by the Baxters of No. 908,
the Cannogate, against the Magistrats of Edinburgh, for fyning them in p. 301.
10 lb. Scots the peice, for importing bad, light, and insufficient bread on
the mercat dayes to Edinburgh, being reported by Forret: the Lords fand
the Magistrats had power, not only by the A&t of Privy Counsell in 1609,
and ther oun A&t in 1649, but also by the Lords of Seffion's allowance
and immemorall posseffion, to cognosce and try the weight and sufficiency
of all bread, tho imported from the Cannogate or elsewher, (tho in the
places wher it was baken, they had ther oun Deaconries, or a different
standart of weight) and fand they had done no wrong; but ordained
them to be set at liberty out of prison on configning of the fynes in the
Clerk of Seffion's hands; and ordained 4 of ther number to confer and
meet with the Magistrats anent the regulation of the bread merkat in tyme
coming, both as to weight, fynesse, and price.

9 Februarij 1683.—The Parliament which was to have met the 15 of No. 910, § 2,
March nixt, was prorogued, by proclamation over the Crosse, in obedience p. 302.
to a letter from his Majesty, to the 10 of Jully nixt.

12 Februarij 1683.—The probation led betuuen Claveris and Sir John No. 911,
p. 302.

Dalrymple, (*vide supra* 14 Decembris 1682) being advised by the Counsell, they fand, that Collonell John Grahame of Claverhouse had done nothing but what was very legall, and consonant to his commiffion and instru&ions, and the Chancelor complimented him fo far, (tho fince, they have chanced to differ,) that they wondred that he, not being a lawyer, had walked so warily in fo irregular a country ; (for he ascryved the reduction of the West to a peaceable conformity and reformation, to himselfe;) and therfor the Chancelor gave him the Counsell's thanks for his incouradgement ; and fand that Sir John Dalrymple, tho a lawyer and Bailzie of the regality of Glenluce, had exceeded his bounds, and had weakned the hands of his Majesties authority, and the Counsell's, and ther commissions, and interfair'd with them ; and therfor they declared the said Sir John to lose his said heretale Bailzeary during his lifetyme, and to pay 500 lb. sterlinc of fyne, and to enter that night in prison in the Castle of Edinburgh, to ly ther, not only till he pay it, but during the Counsell's pleasure. Some ware for a 1000 lb. sterlinc fyne. The consult of the Privy caball, (viz., Chancelor, &c.,) thought this rigor absolutly necessar to discouradge all from topping or oppoing ther military Commissions they shall iffue out. (See more, page 306, *infra*.)

No. 912, 13 Februarij 1683.—The proces betuixt Sir William Ker, and Sir p. 302. William Bennet of Grubet, and Charles Murray of Hadden, and others, anent the debaitable lands on the borders betuen Scotland and England, being advised, the Lords fand, the King and Sir William Ker, his donator, had the right of property ; but that præscription might also run against his Majesty, and therfor fand, that the neighbouring gentlemen having conterminous and adjacent lands, might præscryve, by 40 years possession, a right of commony, and a servitude of pasturage, throw the famen.

No. 915, 14 Februarij 1683.—The ships called the Patience and Palmtree, (*de p. 303. quibus supra pag. 274,*) are decided to be free, in favors of the strangers, and the Capers made liable for restitution, each of them *in solidum*. John Inglis, who manadged all this affair for the strangers, and fought to eat it all up with exorbitant accounts of expenses, threatned he would exact it

of Bailzie Baird, one of the defenders, and leive him to seek his proportionall releiff from the Earl of Hadinton, as representing Rothes, the Earl of Lauderdale, Sir James Stanfield, &c.

13, 14, & 15 *dayes of Februar* 1683.—Thir dayes ware spent in advising No. 916,
that tedious improbation of Sir Robert Murray's against Richard Murray p. 303.
of Brughton, (*vide supra pag. 184, et seq.*) of the deeds of lease and release of
the Earle of Annandale's estate in Ireland ; and the Lords fand them false
and feinzied ; and the sentence was pronounced on the 15 day. Brughton
gave in declinators, [1^o] Against the Marquis of Atholl, as having right
to a part of the Irish lands, which was the subje&t matter of the contro-
versy : he declined himselfe ; but to shew he would take no advantage
of Sir Robert Murray, he brought in the disposition, and teared it before
the Lords ; but I hear, within 8 dayes after, it was renewed to him by
Sir Robert Murray. 2^{do}. Against Drumcairn, as one who had agented
the affair for Sir Robert, before he was a Lord. And 3rd. Against Nairn,
because he had expreffed himselfe partially against Brughton, in saying,
Hares should have fair hunting, but wolves may be killed any way. The
Lords refused the declinators against them.

2. The Treasurer and other Lords, to the number of 5 or 6, who ware
Brughton's friends, designed only to have the deeds found [im]probative
and null, on thir 2 accounts, 1^o This would have salved Brughton's reputa-
tion, and salved him from any hazard or punishment. 2^{do}. Such a
decreet as that would not have been regarded in Ireland ; which they
would have looked on as only null for want of formalities or solemnities
required by the Scots Law, such as the wryter's name, &c., nowayes
founded on the *jus gentium ubique receptum* ; but being found false, that
is a vice which is regarded *per totum orbem*.

Some affirmed, this was a dangerous decision, to find a writ null upon
extrinsick probation of being *alibi*, &c., wher the 2 infstrumentary wit-
nesses insert did abyde at the wryts, as true and reall deeds which
they saw Annandale subscryve : only the hazard of the preparative was
the lesse in this, that thesse 2 witnessses, Maclellan and Hounam, ware
gravati et pessimae famæ ; and no case will readily occur again with all

Brughton's circumstances ; and so it needs not be a precedent, or leading case. But this teaches us, great heed should be taken to get and exhibit famous honest witnessess to writs of importance. 2^{do} It was thought arbitrary to find the indirect articles of falsehood proven heir ; it being evident ther was not one of them fullie proven by 2 concurring witnessess. But it was answered, Ther being a *semiplena probatio* by one witness, or more upon hearsay, in every one of them, &c., thesse imperfect probations being conjoyned, they might amount to a conviction for satifying the Judge's mind that the deed was false.

The 2^a point the Lords advised, If thir deeds should be lacerat, cancelled, and destroyed, they being now found false. Sir G. Lockhart, for Brughton, alledged many people in Ireland had got subalterne rights, who not being called nor heard, the evident could not be borne : yet thesse rights, *resoluto jure dantis*, most fall in consequence. Some of the Lords thought they should, by a letter, acquaint the Irish Judges with it first ; but it was carried, they should be clipped and borne whenever the decreet should be extracted. Then 3^o The King's Advocat urged, that the Lords might remit him to the Criminall Court, to be punished capitally as a falsary ; and that they might presently secure his person in prison till that tryall, for he had the confidence to be going publickly up and doun the streets, after they had found it false. The Lords thinking they had gone a great eneugh lenth already, and to give him a fair opportunity and occasion to escape, they refused to remit or secure him ; but allowed the Advocat himselfe, if he pleased, to insist against him criminally, and to lead what probation he thinks fit : but if ther decreet do not bear that it remits him, it will not be *probatio probata* to the Affise. The reasons of this ware, 1^o It was not proven that he was the fabricator himselfe, but only that he was in the other roume when it's said to have been subscryved ; and so he is only airt and part in using it : (yet see A& 22, Parliament 1621.) 2^{do} The deeds ware not found false on the direct manner of improbation, but only upon indirect articles conjoyned and accumulat together ; which at best is but a presumptive and illative probation ; and it ware very hard, upon such presumptions, to take away a man's life.— Dury, on the 14 day of July 1638, Dumbar, &c., tells us, the Lords in

such cases use to punish the falsaries themselves, *pæna arbitraria*, by banishment, stigmatizing them, setting them on the pillory, infamy, &c., without remitting them to the Justices: yet I find Kennedy, in 1663, hanged for falsehood, upon a decree of the Lords, upon a very weak and presumptive probation. (*Vide infra* more of this, 29 *Martij* 1683.)

2^{do.} (15 *Februarij* 1683.)—Sir John Dalrymple and Sir John Harper have both bills in to the Secret Counsell for ther liberation, but they are waved and delayed.

16 *Februarij* 1683.—At Exchequer, Sir Alexander Morison of Preston-
grange, having right from the Earle of Louthian to a part of the *ere&tion* p. 304.
of the Abbacy of Newbotle, is perhued for the few-dueties of his oun
lands posseſſed by him in property, which they ware in use to pay to the
Abbacy in the tyme of Popery, before the annexation of Kirk-lands to the
Croun, and the *ere&tion* theirof in a temporall Lordship. Answered, That
the 14 A&t of the Parliament held in 1633, making the King superior of
all Kirk-lands, in compensation and reward to them who had voluntarily
surrendred ther superiorities of ther kirk lands to the King, they got a
right to the few-duties of all the vassalls, ay till theſſe few fermes ware
redeimed by payment of 1000 mks. the chalder; and it ware absurd he
should have right to the few-duties of other waffals' lands, and not have
right to retain his oun few-duties of the lands he posſeit in property
himſelfe, especially ſeing he was infect by the King, upon a charter bear-
ing a blanch duety; and which was no laefion nor diminution to the Croun
revenue, ſeing they may redeeme when they will; and by conuſion the
superiority and property was confolidated. The King's Advocat opponed
the ſaid A&t in 1633, wher the Lords of *ere&tion* are appointed to pay the
ſame few-duties for ther properties that theſſe Kirk-lands payed before
the Reformation.

2. On the 23 of Februar 1683 this was decided, and found they could
not retain ther oun few-duties, but they behooved to pay them in to
the Exchequer, which will be about 200 lb. Scots by year to Preston-
grange; but he was not much concerned how it went; because he had
reall warrandice in the Lordship of Newbotle to recur upon. This Inter-

locutor concerns many, and particularly Panmuir, for Arbroath Abbacy ; and my Lord Torphichen, whosse Temple-lands they inclined to find to be of the nature of other Kirk-lands, and in the same case ; (yet see the contrare of this in the Lawyers ther receaved opinion, in my summary compend I have besyde me of Bengeus and Pinsonius, ther *Tractat. de Beneficijs Ecclesiasticis* ;) but the Exchequer waved the decision of it at this tyme.

No. 919, *Eodem die*.—At Exchequer, the Marquis of Athol, Vice-Admirall, had
p. 305. a competition for the affise-herring of the Isles, formerly belonging to the Earle of Argile, and now clamed by Stuart, Shireff of Bute, as having a tack theirof from Argile cled with possession, before the cryme for which he was forfaulted ; but it was contended it belonged to the Hy Admirall.

No. 922, 19 *Februarij* 1683.—At Criminall Court, one Meinzies is pannelled
p. 305. for conversing with rebels, and it being proven against him, (by the mis-
manadgment of Sir D. Thoirs, his advocat, as was reported,) that he had
collected contribution money for thesse rebels in the West, and distri-
buted it ; and that he had receaved letters from Balfour of Kinloch, one
of the Archbischop of St. Andrews's murderers : The Justices condemned
him to be hanged : but it afterwards appearing thir witnessses ware in-
famous, and that they had sworne largely, and was delated by one who
was owing him money ; the Privy Counsell repreived him.

No. 924, 20 *Februarij* 1683.—Sir John Dalrymple (*de quo supra pag. 302*) is
p. 306. this day liberat from prison by the Counsell on paying his fyne, Hew
Wallace, cashkeeper, having reported his discharge, and upon a bill to
the Counsell relating the sentence, and acknowledging his rashnesse, and
craving the Secret Counsell pardon.

No. 925, 21 *Februarij* 1683.— Aikman Lady Pitcairley, as executrix
p. 306. to hir husband, *contra* the Earle of Hadington, for ane account of writings
and depursemnts for the late Chancelor Rothes, which Hadinton had sub-
scryved with this condition, “ If the articles ware just ; ” and shee offering
to instruct them by production of Pitcairlie’s count book, wher they ware

all standing unscored. The Lords, on Forret's report, fand the Earle's subscription not obligatory, unlesse they otherwayes proved the wrytings and depursemens; which they allowed hir to doe, by thesse that ware Mr. J. Bayne of Pitcairlie's servants at the tyme.

21 Februarij 1683.—Earle of Leven and Mr. Francis Montgommery, No. 926,
 (see them *supra* page 288,) who craved all the bygane rents and moveables of the Countesse of Leven, as falling under his *jus mariti*, and that without being liable for the debt which was not established against him, nor the security renued during the standing of the marriage.

Then for the jewells, it was alledged by Leven, They fell not under the *jus mariti*, but that each of them being a separat species or kind, they befell as airship to him as air. 2^{do}. For the great jewell, called the Jewell of the family, gifted to Alexander Lesly, first Earle of Leven, (when a Generall in Germany,) by Gustavus Adolphus, King of Sweden, it was not only airship, but by his testament, he had prohibited to alienat it *extra familiam*, but to remain as the jewell of the House.

Answered for Mr. Francis, That in all the rolls of the Comisariot's airship moveable goods, none of them mentioned jewells; and the reason was this, because the relict got them always as hir *jocal a* and *paraphernalia*, 2^{do} This is but a *nudum preceptum de non alienando*, which does not impede transmission, without ther ware a penalty, which is not heir. This subtilty (which I am sure Earle Alexander never dreamed of) is founded in *L. 38, § 4, et l. 93, D. de Legatis, 3^{to}*.

2. This great cause was advised on the 27 of Februar 1683, and the Lords fand, That the contra&t of marriage betuen Mr. Francis and his lady could not be quarrelled on that pretence, that the lady was then minor.¹ Mr. Francis declined Colinton, on the late A&t of Parliament 1681, against unckles in affinity to be Judges, as weill as in consanguinity; for my Lord Melvill's mother was the present Lady Colinton's sister, and so he is husband to Leven's grand-aunt. But Tarbet, Clerk-Register, sat, because he is only coufin-german.

¹ [See the printed Decisions, vol. i. p. 220, for a full report of this case.]

3. The words of this Interlocutor, as it was dictated to the Clerk of the processse, ware, “The Lords finds, That the great jewell, giftid by the King of Sweden, must belong to the family ; and that this jewell is the airship jewell ; and that the rest of the jewells are not airship moveables ; and that the Countesse might dispose on thesse jewells as being *paraphernalia* on deathbed, in prejudice of the air’s releiff against thesse jewells ; and finds that the air cannot be prejudged of his releiff by the discharge and disposition given by hir on deathbed, and that the Countesse hir oath ratifieing the same is personall, and cannot prejudge the Earle of Leven hir air of his releiff against the same ; and finds that the *jus mariti* is not burdenable with the wife’s debts, but only *subfidiarie*, as a *remedium extraordinarium* after discussion of the wife’s hæretale and moveable eftate, introduced in favors of creditors, that they may not be losers ; and finds that Mr. Francis Montgomry most have the moveables purchassed with the 10,000 lb. not to be counted in the executry, and that the Earle of Leven ought to be free of the 10,000 lb. appointed and allowed by the said contract for buying of moveables and furniture ; and finds that the Countesse, albeit a minor, might give a competent provision to hir husband for his lifrent use, and might transact the courtesy ; and also finds the provision in favors of Mr. Francis in the contract of marriage was not exorbitant, and therfor they sustained the same.

No. 927, 22 Februarij 1683.—In the spulzie of the teinds of Innerkeithing, per-
p. 308. shued by the Earle of Tuedale against the Earle of Lauderdale ; the Lords, on Pitmedden’s report, before answer to the nullities objected against the tack given in 1641, to the Earle of Dumferling of the lordship of Dumfermeling, as set of the annexed property, without a dissolution prævious ; ordained Tuedale and the defender to count and reckon if Tuedale was payed of the summes for which he and his father was ingaged, as cautioner for the late Earle of Dumferling. This was to bring in my Lord Dumferling’s claime, who is now in court by marrieng Marquis Huntlie’s sister.

No. 929, Eodem die.—Mr. John Strauchan, minister, and Sir Alexander Forbes
p. 308. of Tolquhon’s cause being reported by Kemnay, the Lords fand Sir A.

Forbes had lost the cause, in regard *pendente lite* he had beat the per-shuar ; tho the beating arose on another quarrell, and not upon that proces ; having only forced him to obey a caption against him, by keeping him on horseback ; and that he had already payed 10,000 mks. of fyne imposed upon him by the Privy Counsell for that same fault, wheirof the said Minister had gotten 500 mks. for his expences ; and *pænæ non debent acerbe bis exigi* ; and they being both pœnall, *non debent circa idem objectum concurrere* ; and that the libell was for vicarage teinds, which in the wholle ware not worth 1000 mks., yet he had libelled 9000 mks. The Lords repelled all this, and decerned for the wholle.

22 Februarij 1683.—Sir Patrick Threipland having conveened at No. 932, Privy Counsell, one Lundy and Glasse, the late Provests of Perth, for ^{P. 309.} calumniating him, and for ther malverfations. It was alledged, It was *res hactenus judicata*. The Lords ordained the former sentence to be produced, that they might confider how far it was judged already.

2^{do}. Blaikwood is repreeved 2 moneths farder.

3^{to}. Meinzies (*de quo supra* 19 Februar) is recommended to the King for a pardon.

23 Februarij 1683.—His Majestie's Advocat's Declarator of Recognition against the creditors of Urquhart of Cromarty, was this day advised, and decided. The Lords finds as to the first point, That alienations, tho without consent of the superior, yet if they be confirmed before the major part be annailzied, can nather recognosce themselves, nor come *in computo* to make recognition as to any other lands. As to the 2^d point, finds the confirmations after the major part is alienat, and before the gift of recognition, does secure themselves, but most come *in computo* to make up the major part for the recognoscing of what is not confirmed. As to the 3^t, the Lords finds the Novo-damus does so secure against the recognition, that all the alienations before the Novo-damus cannot come *in computo* to make up the ground of the recognition. As to the 4^t, the Lords finds, notwithstanding of the infectments, wheirupon recognition is craved, be likewayes in lands of different holdings, as holding few or blench, and

belonging to different heritors, yet they most be considered as a ground of recognition *quoad valorem* of the wholle summes wheirupon the infestment was taken, without respect to the releiff which may be expected out of thesse other lands. As to the 5^t, the Lords repells the alledgeance, that the infestments ware in trust as it's condescended on, viz., that they ware in the vassall's charter-kift, and that he retained the possession; except the vassall's fraud and dole ware instructed, or that the gift ware to the vassall's behooff. To the 6^t, the Lords repells the alledgeance founded upon the resignation made by old Cromarty in favors of his sone, albeit bearing a confirmation in what relates to rights made to the vassall, and not to rights made be the vassalls. 7^o The Lords repells the alledgeance founded on the inhibitions prior to some of the grounds of the recognition. 8^m. They find the infestments that ware *habili modo* extinguished before the concurse of the major part alienate cannot come *in computo*. 9^o They find that seafines intrinsically null are not to be respeted as a ground of recognition: but I think not—registration of the seafin within 60 dayes is not such ane intrinsick nullity.

This, with John Hay of Muirie's case,¹ clears many debates that arose on Recognitions. But the 4^t and 5^t articles of this Interlocutor ware much complained of as hard and great strectches of this odious casuality of recognition. The 4^t, because if the infestment be also furth of blench and few lands, why should it be all cast on upon the waird lands: only they say the vassall *fecit omne quod in se erat*, by giving it also out of the waird lands, and that it is likewayes out of others, does not diminish the vassall's ingratitudo and contempt of his superior. The 5^t was grudged at, seing ther can not be a more pregnant qualification of a trust and a conveyance than to find a right in a debtor's charter-kift, which presumes it payed and retired, or led to his behooff, unlesse another way *quomodo* it came ther, by borrowing or stealling it, &c., can be condescended on, as in Fergusson and Seton of Carriston's case in 1678.

¹ [The several entries in Fountainhall's Manuscript, respecting this case of Hay of Muirie, are given in the printed Decisions, vol. i. pp. 119, 122, 131, 168, 225, 230, 248, and 301, during an interval of 4 years, from 27th November 1680, to 14th August 1684.]

24 Februarij 1683.—At night, by order from the Chancelor, Mr. No. 935,
Robert Blaikwood younger, merchand in Edinburgh, was, upon the
^{p. 310.} delation of Cunyghame of Montgrenan, and Jofias Johnston, imprisoned,
as if he had receaved letters from the West country people, when in armes
at Bothuel-bridge, and kepted correspondence with them in Holland, and
remitteid them bills. And one Hew Cunyghame, seized on for the same
cause, was put under caution.

And on the 26 of Februar, the Privy Counsell met anent it, and about
a field conventicle lately held at Drumclog, near Loudon hill.

Primo Martij 1683.—At Privy Counsell, ther are some letters from the No. 939,
King. 1^o One to the Session, anent ther Commission for Argile's for-
faultor, suspending and retracting what was given to Argile's children, till
they produce the charter-kift, to secure the Chancelor or others that shall
get of his land ; and till they reproduce some armes he borrowed from
the publick ; and ordains the charter-kift when produced, and Inneraray
Castle, and the armes ther, to be secured ; and declares he is resolved to
provide for Lorne, &c., another way.

2^{da} A letter to the Justice Court, thanking them for ther pains they
had taken in convicting William Laury of Blaikwood, for his coun-
tancing of rebels, and approving of what they had done against him.

3^{do}. A letter anent one (supposed to be the Bisshop of Edinburgh) who
had undertaken to wryt his Majestie's Father's life, and for his incouradge-
ment, he is promised a reward.

6 Martij 1683.—The Earle of Lauderdale gave in a bill to the Lords, No. 941,
craving that they might allow the Lyon King-at-armes to grant some
^{p. 311.} allowance in the funerall pomp of the Duke of Lauderdale, notwith-
standing of the restriktions in the late Act of Parliament in 1681, in
regard he had been oft his Majestie's Commisioner, and borne the
greatest characters and employes of a subject ; at leift that they would ex-
plain the said A& of Parliament, which was confused and unclear. The
Lords referred it to the Privy Counsell ; but thought they could not dis-
pense with the A& of Parliament.

No. 948, 8 *Martij* 1683.—The dyet for the Lady Stairs appearance being this
p. 311. day, shee gave in a bill, promisng to leave orderly and regularly in tyme
coming ; and desiring they might passe hir bygane faults in absenting hir-
selfe from the church, or in being present at conventicles ; and that shee
would plead nothing on the informality of hir citation, shee being cited
on 60 dayes, as furth of the country, wheiras shee was all the whille
within it. The Lords of Privy Counsell ordained hir to be cited of new
again.

No. 954, 13 & 14 *Martij* 1683.—Sir John Seton of Garmilton, and Sir Robert
p. 312. Sinclar of Stevinson. The Lords fand Gar[m]ilton could have no other
servitude on Stevinson's land for his milne damme, save what hes been in
possestion of, and affoilzied Stevinson from dammages : this having been
done in the afternoon in the Chancelor's absence, he was disfatisfyed
theirwith. (See more, *infra pag.* 320, at the 30 of March 1683.)

No. 955, *Eodem* 14 *Martij* 1683.—Ludovick Spence against Sir William Sharp
p. 312. and Mr. James Scot, Shireff-Clerk of Edinburgh, reported by Colinton ;
the Lords affoilzied Mr. James Scot, as not being debtor to Sir Francis
Ruthven, but to the King's Majesty and his Cashkeeper, as to that fyne
imposed on Sir Patrick Hepburne of Black Castle, for harboring Mr.
Gabriel Semple, ane phanatick minister, and which was gifted to Sir
Francis : And also affoilzied Sir William Sharp, he being countable onlie
to the King and the Lords of the Treasury for that money ; tho it was
alledged, from *Damhouderij praxis Criminalis*, cap. 83, that *militare
stipendium*, especially such donatives as thir, ware arreistable, and not of
an alimentary nature.

No. 957, 15 *Martij* 1683.—Mr. James Pilans's bill against Sir James Turner
p. 313. (*de quo supra pag.* 283, *et seq.*) was this day refused, and the Lords ad-
hæred to ther former Interlocutor.

No. 961, 15 *Martij* 1683.—At Privy Counsell, George Gordon, bailzie to Irving
p. 313. of Drum, pershues Rosse younger of Auchlofan for opprescion and vio-

lence. Alledged, He being one of the Hyland Justiciary, required his concurrence to apprehend a nottor theiff. The libell was admitted to probation.

2^{do}. The Earle of Kincarn's [Kincardine's] creditors gets his charter-kist sequestrat, and depositat in the Lords of Seffion's custody.

3^{do}. Mr. John Philp (*de quo supra* page 297) is this day fyned in 2000 lb. sterling, or 36,000 mks., for calling the Duke of York "A bloody tyrant;" and is sent to the Basse till he pay it; and to lay ther even after the payment of it, during the Counsell's pleasure: And the Lords declared, if he had not once been a Minister, they would have remitted him to the Criminall Court for his life; as also they recommended to him more sobriety, and to forbear drinking, (for it was in cups, and his *compotores* delated him;) and certified him, if he did not pay it, or give sufficient security and assiginations to bonds, within 15 dayes, they would ordaine the King's Advocat to pershue him criminally; and declared him infamous, and never capable of preaching heirafter. This was a deep fyne; but he made no use of the estate God had given him.

In the action pershued by Robert Hamilton of Presmennan, as collector No. 962, to the Lords of the Session of ther rents and taxation, against the Vicount P. 314. of Oxenfurd, it being advised, the Lords affoilzied Oxford, in respe&t of the discharge given to his father by the Lords of Session; and fand no circumvention; (it ware a shame to confesse the Lords had been cheated;) and that Mr. Robert Hodge and the other sub-collectors being put in by the Lords, and not by him, he was not liable for them; (yet *vide supra* Halton's case of the Mint, 20 Januar 1683, page 293;) but in regard ther was ane error *in calculo* of 1000 lb. and 600 lb. Scots founded on, they referred it to my Lord Pitmedden, to calculat and discusse it; and fand the defender's father might retain of ther rents his oune 15^t part, as one of the Lords of the Session, thosse years that he and others ware put out *de facto* (and not *de jure*) by the usurpers betuen 1651 and 1660, tho he did not serve for it. This Session it was observed, that the Chancellor and Lords of the Session clenged ther hands of many causes that had long depended, as Brughton's falsehood and this, which Stairs would

never decide ; and now *in odium* of him, the Lords determines against themselves.

No. 967, 20 *Martij* 1683.—At Privy Counsell, John Fleiming, factor at Rotterdam, being one of them that was cited among the fugitive Scots ther to appear, gave in a bill, with a recommendation of him, in Latin, from the States of Rotterdam, that he was none of the countenancers of the late Archbishop of St. Andrew's murderers. The Privy Counsell appointed the King's Advocat to draw ane answere for them in Latin, telling, that at their desire they had discharged him of the edictall citation given him at the mercat crosse of Edinburgh, and pear and shore of Leith, in respect sundry merchands in Edinburgh ware ready to declare and attest his loyalty. (*Vide infra* 2^d Aprill.)

No. 968, 20 *Martij* 1683.—Grahame Bisshop of the Isles against Mr. John Stewart of Afcog, Advocat. The Lords fand the Bisshop hath right to the rentall bolls conforme to the first assumption ; and tho the tack be in 1606, when Bisshops ware, by A&t of Parliament then standing, allowed to set long tacks, yet being after the A&t of Parliament in 1585, discharging any conversion of vi&tuall unto money, they find the Church læſed by the smalnes of the price in the converfion, and therfor reduces the tack. This is a leading case, and opens the door to the reduktion of many such tacks. (See my 4^{to}. Manuscript, marked A. 7, page 61.) The Bisshops are now talking, that when the Parliament shall sit, they would have ane A&t of Parliament, binding them up, that they may not set tacks of ther teynds for 19 years, (to wrong the nixt successor,) but only during ther lifetimes as other inferior clergymen doe, that theſſe casualties may not be forſtalled, and given away from the nixt incumbent who may not outlive the expiration of that tack set by his predecessor : but at this rate few would take tacks from them ; at leift would give them little or nothing for gressums and entries of ſo uncertain a tack. However, ere long the tacks of many teynds will fall throw Scotland, tho ſet for many 19 years before the restraining A&t in 1617, and then they will ather [fall] in the hands of the kirkmen, or of the Titulars and Lords of erec-

tion. (See the folio Law Manuscript A. 7, *Julij* 1677, Sheill, minister at Prestonhaugh, against Sir Andrew Ramsay and others, folio 292.)

Sir G. Lockhart exclamed much against this decision. Thir long tacks of teinds ware invented, because teinds, after the Lateran Counsell, might not be perpetually given away in feu, as being *juris sacri et divini*; and it's wondered, how the laymen consented to the abridging the clergie's illimited power in setting such tacks.

20 & 21 *Martij* 1683.—Kennedy of Collain and Broun of Thorniedyks No. 969,
are imprisoned for fighting togither in the Parliament Closse. (See *infra*
p. 315.
page 319.)

22 *Martij* 1683.—The Earle of Tuedale charger against the tennents No. 975,
of Pinky, reported by Boyne; the Lords finds the letters orderly p. 316.
proceeded, and sustains the Comisars of Edinburgh's decreeet in respect of the
probation, and the [17th] A& of Parliament in 1633, modifieng the teind to
the 5^t part; (yet that A& was mainly for heritors and titulars, and not for
masters and tennents;) and tho they ware really damnified by that low
valuation, (the 4^t part being the true intrinsick value,) yet they had ane
ease by the overrunning of the mettage of ther aikers, and ware free of the
expence they would have been put to of leading away ther oun teind.

Eodem die.—The Earle of Tuedale, Lord and Lady Yester's exhibition No. 976,
ad deliberandum against the Dutchesse of Lauderdale and the Earle p. 316.
theirof, being reported by , the Lords fand the Duke of
Lauderdale's tailzies (tho no infectment be yet taken theiron) sufficient to
exclude any farder produ&tion for inspe&tion; as also that the said late
Duke's disposition of Leidington, &c., to the Dutchesse, cuts of the Lady
Yester's title of appearand air of line to hir father, or of calling for any
farder produ&tion *quoad* thesse lands; and for hir renunciation, if it was
generall of hir very hability and capacity to succeid, of the *spes successionis*, then fand it debarred hir from pershuing *ad deliberandum*; but if
it related to the jewells or other particulars only, then fand it did not
exclude hir from this a&tion.

No. 978, 22 Martij 1683.—At Privy Counsell, Auchlofstan (*de quo upra pag. 313, in fine*) is affoizied from the libell; but ordained to pay the pershuar's witneffes' expences; which was thought a somewhat strange inconsistency.

2^{do}. Mr. James Cunyghame, wryter, being pershued by the Lady for a ryot, the Lords fand, he had lawfully poinded them, yet ordained him to restore them as hir habiliments: the 2 parts of this Interloquitor was also judged contradictory.

No. 979, Eodem die.—Dunfermeling and Calander's case debated at Session p. 317. upon the debts Calander gave in to diminish and abate the conquest proven; (*vide supra pag. 252;*) and Glorat's debt was refused to be allowed, because they wanted the bond, tho they produced a comprising led on it, with a renuntiation of it, which they (with Dumfermeling's moyen by Huntly now his brother-in-law) would not sustain as a sufficient probation, but adhæred to ther former Interlocutor, which was very hard.

No. 980, 22 Martij 1683.—At Privy Counsell, Blaikwood's day of execution is p. 317. continued till the 24 of November; and Wilky, Comifar of Lanrick, is liberat.

2^{do}. Sir James Cockburne pershues one Ancrum, a fewer of his in Dunce, for vitiating a charter, and razing out a clause adjected to it by way of postscript, excepting the property of a yeard out of it, which yeard had been insert in the body of the charter; and he had scraped it of the parchment with a knife. The Counsell, tho it was a cheat, yet referred it to the Session, because it concerned the tryall of a falsehood in point of property. Ancrum alledged, Cockburne had homologat that charter and his right to the yeard, by discharging the few duety of the yeard. The Lords ordained him, before answer, to produce thesse discharges. (*Vide more, infra pag. 320.*)

No. 985, 27 Martij 1683.—One Maxwell, bailzie in Paislay, is pershued for p. 318. usign and producing a false protection, as if it ware under the King

and the Earle of Murraye's hand. He pretended he gave in to the Clerks of the Counsell a true protection, and that some had abstracted it, and given him back this protection ; but the witneses deponed the clear contrarie.

28 *Martij* 1683.—[James] Laury, the nottar and proctor-fiscall in No. 988,
Lanrick, (who escaped out of the hands of the sojors guarding him to the
^{P. 318.} Crimall Court, but was retaken,) is sentenced to be hanged on the 4^t of
Aprill ; for he was forfaulted already in absence, in March 1681, for
being with the rebels at Bothuel-bridge : but in regard he offered him-
selfe ready to make all submisse acknowledgement of the Government,
they repreeved him to the [3^d] day of November nixt.

29 *Martij* 1683.—Sir Robert Murray (*vide supra pag. 303*) gives in a No. 989,
bill to the Lords craving, that in regard the Judges in Ireland did not ^{P. 318.}
respet decreets written on paper without sealls, that they would allow
his decreet against Brughton to be drawen up upon parchment, and the
seall of the Colledge of Justice appended thereto, and to be abbreviated,
that one skin might hold it. The Lords refused to abridge it ; but
appointed it to be written in parchment by way of book, and ther seall
appended to it.

29 *Martij* 1683.—At Privy Counsell, Mr. Irving, minister at Inner- No. 991,
keithing, and Mr. Napier, pershue Stuart of Rossyth, ^{P. 318.} Fergusson,
bailzie ther, and Mr. Malcolme Moulin, schoolmaster ther, for extorting
the subscription of wryts from ane old woman ther, called Drummond,
when shee was dying ; and for imprisoning the Minister, who had become
cautioner in a lawborrows ; and for sundry other ryots. The libell is
admitted to probation. (*Vide infra 12 Aprilis.*)

2^{do.} Thorniedykes pershues Collain (*de quo supra pag. 315*) for assault-
ing and wounding him, and referred it to his oath. It was remitted to a
committee, who settled the parties ; and this will move the Privy Counsell
to deall more gently with them, in inflicting the *vindicta publica* upon
them.

3rd. The Earle of Winton and Lady Carnwath pershue Barbara Burnet, Doctor Leviston's reliet, for delivery of ther papers lying in his hands. The Lords fand they would be sparing to force exhibitions ther ; but would remit them to the Judge Ordinar : yet they ordained it in this case, in respect of the circumstances, that the Doctor had been the Earle's servant, and had a great trust of his papers, and dyed by a sudden and unexpected event, (being drowned in York's shipwreck, May 1682,) ere he could order them ; and therfor ordained the wholle papers to be produced and inventared, as weell the Doctor's as the Earle's, and that upon oath, before Lundy and Abotshall ; and reserved all defences against delivery, ather upon debts owing to the Doctor, or otherwayes.

No. 992, 30 *Martij* 1683.—Vicount Granard, Lady Logy, and Lady Berfoot, p. 319. against George Seton of Barns, being advised by the Lords, they fand, (*vide* thir parties *supra pag.* 301,) by the wrytes produced, the deposition of Mr. Robert Hodge of Waft Gladsmuir, the arbiter and wryter of the minut of the decreet arbitrall, and the comisars, ther clerks and servants, and particularly by the oaths of Home and Sandy, that the said decreet at the beginning hes borne *his estate*, and is fince made *this estate*, by adding the letter *t* to *his* in 2 places of it, wheir Sir John Seton his father is impowered to dispose upon the rest of his estate ; and that it hes no other vitiation in it, and that it appears that Barns, nather by himselfe nor others, had any acceffion theirto. Barns in this proces, to blunt Lady Margaret Hay, his stepmother's proces by the popish priests, agreed with hir ; yet the ennemis he left behind prevailed this far, as we have seen, which they sought to counterballance and enervat Barns's suit he had commenced in Ireland, for some lands ther belonging to his father, wher they made use of the forsaid decreet arbitrall as a renuntiation of all he had to crave, save the lands of Barns.

No. 993, 30 *Martij* 1683.—Bailzie of Torwoodhead against Hew Wallace and Edward Ruthven. (*Vide supra pag.* 281.) The Lords repones Torwoodhead as the nixt air of tailzie to umquhile James Lord Forrester, into the possession of the house, yeards, and parks of Corftorphin, but

prejudice of Hew Wallace's comprisings theirof ; which are reserved as accords till count and reckoning.

Eodem 30 Martij 1683.—At Exchequer, Captain Thomas Hamilton, No. 996,
merchand in Edinburgh, pershues Fleeming, Dick, and the other Magif-
trats theirof, to produce ther books and Treasurer's accounts upon oath,
that the Hy Treasurer may see if they have applyed the patrimonie and
common good of the brugh to necessary and profitable uses. The Magif-
trats, and Sir James Rocheid ther Clerk, being startled at this, they raise
the like summons against Sir Andrew Ramsay, and all that had borne
office in Edinburgh since 1653. After great heat betuen the Chancelor
and Treasurer, the Exchequer refused to sustain proces at privat bur-
gesse's instance, (so as to make it *actio vere popularis*,) that looking too
popular and democratick, like Thomas Anello in Naples, or Count
Tekely's mutinie now in Hungary ; but fand, by the 36 A&t of the Par-
liament held in 1491, James 4^t, and A&t 25, James 5^t, in 1535, the Hy
Treasurer, (as come in place of the old Chamberlain and his Aire,) may
call any brugh to ane account how they spend ther common good ; and
therfor ordained the Magistrats, against the 9^t of April nixt, to exhibite
and produce before him ther books, and he would inspe&t them, and take
notice of any helps or informations should be given him by citizens or
others theirupon ; and sustained this summonds, at leift as ane intimation
by the inhabitants to the Magistrats, to satisfy them how they have im-
ployed so waft a yeirlie common good, conforme to the words of the said
25^t A&t. But it was urged, for privat men to pershue such actions, was
to allow them to pershue Officers of State, which is *mali exempli*; (see the
popular a&tion pershued against Abotshall in 1673, in the Manuscript A.
folio 166, &c., *ubi multa pulchra de Syndicata*;) and Sir John Dalrymple
was lately threatned with a pershuit of perjurie, that having sworne the
Test, yet he still offered to medle in matters of State, by attempting to
accuse Claveris of exacting free quarters ; that only belonging to the King
and his Ministers to quarrell ; and it was not thought fit to discouradge all
taking of money from brughs for doing them good offices. Yet, in 1664,
I find Mr. Patrick Oliphant was allowed to accuse Sir John Fletcher,

King's Advocat. This proces was designed to expiscat what brybes had been given to Ministers of State, or the Duchesse of Lauderdale, or others, which the Treasurer called The mystery of iniquity, which be-hooed to be discovered. (*Vide infra pag. 329*, anent the new Magistrats of Edinburgh ; and Manuscript, A. 13, page 83, at Aprill 1684.)

No. 997, *Eodem 30 Martij 1683*.—Garmilton and Stevinson. (*Vide supra p. 320.* *pag. 312.*) The Chancelor caused the Lords alter ther Interlocutor, and find Stevinson lyable to refound and make up Garmilton's damage, that the water ran not towards his milne as it was wont to doe ; tho all the servitude that Stevinson owed him in law was only a *nuda patientia* throw his ground ; and that the channell of the water was diverted *caſu* and by speet, without any fact or deed on Stevinson's part, and could not be returned to its former channell.

No. 998, *2 Aprilis 1683*.—At the Crimall Court, Robert Hamilton, (Preston's brother,) generall to the Whigs, Balfour of Kinloch, and other fugitives living in Rotterdam, cited to appear in 60 dayes, (*supra pag. 297.*) are forfaulted in absence. James Stewart, advocat, and others, are denunced fugitives only. And *quoad* a 3^d sort of them, the dyet is continued.

No. 999, *3 Aprilis 1683*.—At Privy Counsell, Aucrum (*de quo supra pag. 317*) is *p. 320.* fyned in 100 lb. sterlign for vitiating Cockburne's charter. For the Session having tryed the cheat, referred the punishment back to the Counsell.

No. 1000, *7 Aprilis 1683*.—Argyle's creditors are ranked by the Lords, by virtue *p. 320.* of the King's Commission to them (*vide supra* of this, page 310 : *Item, infra* in September 1683, page 330) to that effect. The Hospitalls of Heriot in Edinburgh and of Stirling, are placed 1^o *loco*, for both ther principall summes and annuelrents ; such creditors as ather have suffered, or been eminent, for ther loyalty, are ranked 2^{do} *loco*, and they get ther principall summes ; and the rest 3^o *loco*, for the halfe of ther principall summes, and no more ; and this to be payed out of his lands when sold ; and in the meantyme, by the Chamberlain's uplifters of the rent.

9 Aprilis 1683.—At the Criminal Court, Mr. John Somervell, minister No. 1001,
at Cramond, pershues a woman for defamation of him, in affirming before p. 320.
the Presbytrie, that when shee was his servant, he had 5 or 6 severall
tymes attempted to debauch hir, and ly with hir, and told hir that he
knew it was not such a sin as it was called ; but shee had alwayes re-
fisted him. The dyet continued.

10 Aprilis 1683.—At Privy Counsell, ther is a letter from the King, No. 1002,
procured by the Chancellor, that Mr. George Bannerman, Advocat, be p. 320.
adjoyned as his Majestie's Solicitor with Sir William Purves ; tho Sir
William's gift boor to Sir William and his sone, and the longest liver of
them two ; and he adhaered to his right, and the Treasurer fyded him.

2^{de}. Another letter, That Castlehill be one of the Crimall Lords, in
place of my Lord Nairne, whom the King thought fit to excuse, in respect
of his infirmity and age. This provoked the old man to reflect, that when
he was lying in the Tower for the King, Castlehill was then one of Oliver
Cromwell's pages and servants. And Nairne dyed within 6 weeks after
this.—Castlehill had been one of the Justices before, but was deprived in
November 1678, upon a caprice of my Lord Lauderdale, who said, Castle-
hill could hang none without ther oun consent ; and Harcous was then,
by the Duchesse, put in in his place.

3^{de}. The King's letter was red about the Circuit, and the Indemnity to
thosse commons that would take the Test, (which see in print;) and theiron
Sir Jo[hn] Harper and Mr. Jo[hn] Meinzies ware released on caution of
1000 lb. sterlinc to appear when called.

4^{de}. A new commission to the Hy-Treasurer to manadge all the Excise
of Scotland, at his pleasure, and to take the profit theirof (if their be any)
above the 40,000 lb. sterlinc per annum due to the King, and the par-
ticular quota and proportion of it due furth of every shire, as it is
adjuſted and laid on by the [14th] A& of Parliament in 1661, and apply the
excreſce to the King's ſe; this will make it far exceed the 40,000 lb.
sterlinc per annum.—James Hamilton and the brewars' proces (*supra*
page 263) against Sir James Dick, Magnus Prince, and the tackſmen of
the Excife of Edinburgh, and his offering to prove what exorbitant

gainers they ware by it, gave rise to demand this warrand and commiffion from the King ; but otherwayes, it is ane arbitrary incroatchment upon the peopple, contrarie to ther designe in giving the said Excise ; but this now should free the Commissioners of Excise from being subfidiarie bound as to such shires and brughes which the King and his Treasurer shall affume in his oun hand, and set to tacksmen or collectors.

5. Notwithstanding the opposition the Toune of Edinburgh made to this, yet on the 12 of Aprill 1683, this Commission was past in Exchequer, empowering the Treasurer and Treasurer-Depute wher, in any shires or brughes in Scotland, advantage has been made (above the quota establisched) in ferming the Excise, and allowing them to affume theffe brughes and shires, and to annex that profit to the King's Treasury, (they thinking it as rationall, since the peopple payed it, that the King should get it, as to see it pocketed by private men ; but the true way was to have made the case accrefce to the peopple,) and particularly the Toune of Edinburgh ; (for in many places ther is deficiency and losse made up by a cesse on the land-rent, ther is so far from being any excrefce;) and appoints the Excise and imposition to be set by his Treasurer joyntly with that of Mid and Eift Lothian, (for by a bond of union they are conjoyned, and if it ware broke, Eift Lothian's Excise and brewing would fall exceedingly short, but is made up by the triple conjun&tion,) they paying in to the Toune of Edinburgh the tack-duety they have been in use to get for it theffe years bygane, viz., ; so that if ther be any profit to be made above that tack-duety, that the same may come in to his Majestie's use. And accordingly Hew Wallace, cashkeeper, intimated it to the Magistrats of Edinburgh, by way of instrument, that the Treasurer designed to affume ther Excise and imposition, and required them to concurre ; which they at first refused, but at last yeelded to ratify the tack of it he had set to Sir John Young of Leny. This was lookt upon as a great inversion and innovation of that establishment of the Excise, made by the 14 Act of Parliament in 1661, and the [12th] Act anent the Customes and Excise in the Parliament 1669 ; so that by this, the King, who only formerly had a grant from the Parliament of ane annuity

out of the Excise of 40,000 lb. sterl^{ing} by year, may make 60,000 lb. sterl^{ing} per annum of it, which is an indire^t impos^{ing} and leavieng of money without authority of Parliament ; and tho the King now seizes on it as *adieutorum caducum et nullius*, yet the ease and abatement should in law redound to the Brewars ; so that if one mark per boll should compleitly make up the King's quota of 40,000 lb. sterl^{ing}, their should be no more exacted : But the Hy-Treasurer and our other Statesmen are resolved to make up a stock of money, to forward the Duke of York's affairs, when he shall succeid to the croun.

6. And upon considering the [8th] A&t of Parliament in 1681, it occurs, that the continuation given ther of the Excise for 5 years to the King's successor, is not of the 40,000 lb. sterl^{ing} by year, but seemes to be of the 2 marks per boll, and the haill Excise of the brewing of the kingdome ; (which certainly was not the Parliament's meaning to give any more but what the King presently posseffes ; but hes been brought in by surprize, and past inadvertently ;) for, at this rate, it will come to a 3^d part more, and will be 60,000 lb. sterl^{ing} a year, yea it will be 80,000 lb. sterl^{ing} per annum, if it shall be enacted for noblemen, gentlemen, and private persons' brewings for the use of ther oun families, and not to tap, retaill, or sell out again ; and yet the said A&t will reach this, tho it was nather meant nor noticed by the Parliament 1681, when they past that A&t. All can be said is this, that in the narrative, it relates to the fundamall A&t in 1661, giving the King not the wholle Excise, but only ane annuity of 40,000 lb. sterl^{ing} yearly out of that subiect matter.

7. *Eodem 10 die Aprilis.*—Sir William Bruce of Stanop's sone pershus the lady Kirkland, his father's reliet, for ane aliment, as lif-renting the most part of his estate : the Privy Counsell remitted it to the Judge Ordinar, viz., the Session's. So this point of restricting lif-renters they keep it arbitrary to doe, or not doe, as they favor the parties. (*Vide supra* Craigintinnie's case, pag. 192.)

12 Aprilis 1683.—The proclamation for the Circuit Criminall Courts No. 1003,
going throw the Westren parts ; see it in print. p. 322.

Item, The Minister of Inverkeything's case (*vide supra* pag. 318, in

fine) is advised, and the Lords fyned Rossyth in 500 m^{ks}. ; and ordained Mr. Naper to be repossest ; and if any thing be imbezilled or abstra&ted, that Rossyth shall be liable in restitution of the triple of it.

No. 1004, 19 *Aprilis* 1683.—The A&t of Privy Counsell is made for registering p. 322. prote&ctions (*vide supra pag. 215*) that passes the King's hands, because some (as one Maxwell, *supra*) had adventured to falsify them.

2^{do}. Strowan Robertson's A&t in favors of his timber flots, cast away coming doun the rivers of Tay or Erne ; and his saw milnes ; and for repairing the hy wayes from his woods to St. Johnston.

No. 1005, *Primo Maij* 1683.—At Privy Counsell, one Andrew Jaffray, a pedlar, p. 322. pershues George Foord, litster in Dalkeith, for wounding him, and robbing him of his pack. Admitted to probation.

2^{do}. The heritors of Liberton parish pershue Mr. Ninian Paterson, the late Minister, for delivery up [of] the Kirk Bible, ther poor's money, and the communion cups, with the keyes of the manse. It's referred to the Bisshop of Edinburgh ; and if they [he] cannot agree them, then ordains him to be charged with horning to deliver them up.

No. 1006, 10 *Maij* 1683.—*Supra* page 295, we see the decreet of Seffion against p. 322. Lauderdale and the other Officers of the Mint. Now we come to see why the Chancelor took all this pains to make them guilty : for this day is ther a letter red at Privy Counsell and Exchequer, bearing the final sentence and determination he gave furth against the Officers of the Mint, gifting most of it to the Chancelor, viz., That wher his Advocat having obtained a decreet against them before the Lords of Seffion for 72,000 l^b. sterling ; and he minding the eminent services he hath receaved from his late Generall of the Mint, now E[arle] of Lauderdale, therfor he mitigats the sentence against them, and finds him only liable in 20,000 l^b. sterling for his part of it ; wheirof 16,000 l^b. sterling the King gifts to his Chancelor, and 4000 l^b. sterling to Grahame of Claverhouse ; with this declaration, that if Lauderdale and his sone the Lord Justice-Clerk shall dispose the lands and lordship of Dundee and Dudhope (which the King had

gifted him the *ultimus hæres*, waird, marriage and recognition of, 11 years ago,) in favors of the Chancelor, then he shall be free of the forsaide summe of 20,000 lb. sterling, providing he give reall warrandice out of other lands, and against all the late Earle of Dundie's creditors, or ther consents; and that it contain all within 10 miles of Dundy, (so that Glas-trie and Innerkeithen falls not under it;) and that Claverhouse shall have power to redeem the house, yeards and parks of Dudhope, with the constabulary of Dundy, and all its emoluments, from the Chancelor at 20 years purchasse, (which some valued worth 30 years, because of the great dependance and superiority.) And as to Sir John Falconer late Master, the King fined him (this was in a separate letter from the former) in 4 years and a halfe's full rent of his wholle estate, both personall and reall, befyde the bullion in his hand he was yet resting:—He was made so easie, because they had privatly forced him to give his brother, David Falconer, a bond of 9000 mks. And decerned Mr. James Falconer, the late Warden's son, and Alexander Maitland the late Counter-warden, in 6 years' rent of ther wholle fortunes; tho ther was no passive titles proven against the 1st, and not so much as a decreet against the 2^d. This arbitrary way was taken with thir two, because Mr. James's father having hanged himselfe, (as was reported,) his son refused to pay any composition to the Treasurer for his escheat, shewing a right he had long prior to lif-rent and all, denuding his father, and much debt on it: And it was to force the 2^d to dimit his place of maifery.¹ It was said, the fynes of thir 3 last ware given to the 2 Scots Secretaries.—This was a miserable reverse of fortune upon my Lord Lauderdale, for all his services, (see morall Observes on this, *alibi*;) and a great document to all Statmen of the lubricity and instability of ther offices; and it was no wonder to see the Lords' unwarrantable and illegall decreet restricted, they having decided *supra* some very od and irregular points in it: but it matters not whither

¹ On reading of this Letter, I found it likewayes commanded the E[arle] of Lauderdale to discharge any releiff he clamed or had of recurring against Sir John Falconer as Master, or the other inferior officers of the Mint; which was procured by the Lady Erroll and President Newton, for his father Glenfarquhar, and hir brother Southesque, ware cautioners for Sir John Falconer's administration, and they feared it might at the long run land upon them. (Marg. Note in MS.)

a greater or a lesser fyne break one, if one, or any one of them accables and ruines us. He who procured letters from the King against others, is now *justo Dei judicio* used with the same measure as the Earle of Morton, who brought home the heading Maiden to Scotland. If the King, or Parliament, or Justice Court would, in ane arbitrary way, (which if pardonable in any case, would be heir) forfault the Dutchesse of Lauderdale for treasonable reviling the King, as ungrate to hir and hir Lord, or on other grounds retrinch hir of some of that land shee by circumvention got from hir husband, and give it to Halton, it would be some reparation. (*Vide* anent closing up the Mint, *infra* 4 Jullie 1683, pag. 326.)

2. In August 1683, the Chancelor and Lauderdale aggrees ; and so he reaps the fruit of all this pains he had tane in carrieng on a decreet and fyne for his ounе use ; he accepts of the halfe, viz., 8000 lb. sterlinc, or 100,000 lb. Scots, and 20,000 lb. Scots farder when they shall be able, and wheiron they gave him Sir William Sharp, Cockburne, &c., cautioners ; and having gotten ane affignation to the Chancelor's right, they offered to Claverhouse (who resented the Chancelor's transacting for himselfe, and deserting him and entring in freindship with Halton) the house, yeards and old park of Dudhop, with the constabulary of Dundy for 20 years purchasse, as he was to have payed to the Chancelor, in whosse place they ware come ; and they being debtors *alternative* in 4000 lb. sterlinc, or that offer, they elected this last ; which he declined to accept :—So the freindship betwen the Chancelor and Claveris, bottomed on interest, heir falls asunder.

No. 1007, *Eodem mense Maio* 1683.—Ther is a letter from the King anent the
p. 323. Castle of Stirling, that it be viewed, and a plan of the fortification therof taken ; and ane insinuation that the Earle of Mar (whosse ancestors have had the keiping of it thesse 3 or 400 years, as also once of Edinburgh and Dumbarton Castles,) may sell the governement of it to the King, that he may place whom he will ; and that Mar keep the money-rent of the lordship belonging therto, till he count and reckon anent the summes are owing him by the King ; and that the vi&uall-rent of it be annexed and

brought in to the Exchequer. The designe of this was to put it in the Chancellor's hands and keeping, as a strong passe and key betuen the Lowlands and the Hylands ; according to the old motto about the armes of Stirling anent ther bridge,

I am a passe, as travellers doe ken,
To Scottish, British, and to Englishmen ;

It standing with many hills besyde it ; which made the Abbots and Monks of Cambuskenneth neir it, and King James the 6^t (who, and many of his predeceffors, ware bred ther in ther infancy) to observe, that the wind and weit met once a day at the crosse of Stirling. Forth there hes many crooks, Alloway being 24 miles by water from Stirling, and only 4 by land : So that it's a byword,

The lands in the crooks of Forth
Are worth ane Earle[dom] in the North.

And to force Mar to quite his superiorities in Kildrummie and the Brae of Mar to the Marquis of Huntly, (that so he might be sole in the North, Argile being broke, and Seaforth ready to compone for his superiorities ther,) Mar's command and dependance being larger than the Marquisses ; and all thir hy attempts of the Chancellor ware done, tho Mar had freely discharged him the holding of Haddo, by which he was bound to ryde with him, and furnish 4 men (archers), and resigned it, that he might immediatly hold it of the King. But Mar having shounen his rights, they fand his hæretale keeping of Stirling Castle both ane ancient and valid right.

Eodem tempore mense Maio 1683.—A sojourner is hanged for killing a No. 1008,
scialter, it being *delictum commune*, and not *militare*, and so was judged P. 323.
by the Toune of Edinburgh.

Item, One [John] Wilfon was hanged for being at Bothuel-bridge.

22 & 24 Maij 1683.—Claverhouse is admitted a Privy Councillor. No. 1009,
2^{do}. John Forrester pershues John Forbes of Cullodin for oppressing P. 323.
the shire, in exacting and collecting the Excise ; *item*, for poinding him
illegally. The Lord Doun and others violently partyed Foster : It was

committed with a prospect to a settlement ; but on the 24 of May, the Counsell fyned Cullodin and the other Commissioners of the Excise in 900 m^{ks}.

3^{do}. The officers of the Militia in the westren shires gave in a petition, bearing, that by former A&s of Counsell, they had been disarmed, and discharged to have a horse above 5 lb. sterl^g; and now they being again pleased to call them out again, they could not put themselves in readines against the dayes of the muster mentioned in the Counsell's last proclamation, and therfor craved a farder day for ther rendevouz ; which was granted.

No. 1010, 4 Junij 1683.—Ther are 2 A&s of Privy Counsell made ; the one,
p. 324. against keeping chaplains and pedagogues, who had not tane the Test, under the borrowed names of physitians, chamberlains, or servants. The 2^d was, against misapplying mortifications for hy-wayes, and nominating oversiers for hy-wayes, bridges, and ferries.

No. 1011, 5 Junij 1683, et diebus sequentibus.—The Circuit Court began at
p. 324. Stirling, and on the 10^t day at Glasgow, and so forward throw the other places. (In thir places the Justice-deputes went bareheaded as ushers to the Court before the Criminall Lords ; but they ware not obliged to doe it.)—At Stirling, ther ware many small crymes, and dittayes had been taken up in the Porteous roll which I found was used in Italy.

1^o. One is perfhued for cursing his father : he confesses he called him a drunken dog : he is sentenced to enter in prison in the toune wher he dwelt, and not to come forth till the father interceeded at the Magistrats for him, and that he craved his father openly pardon : This was to uphold the 5^t command.

2^{do}. One is conveined for having reviled the Minister, in causing the piper play *The Deill stick the Minister*. Sundry fidlers ware ther present as witnesse, to declare it was the name of ane spring.

3^{do}. Skeen of Halzeards, in Fyffe, is called for oppression and sacrifice, in applying money got at the Church door (which was the poor's) to pay a debt the bedell was owing him. The dyet deserted.

4^{to}. A nottar is pannelled for inserting a false date in a seafin, to make it præferable. This continued ; because it was not yet improven before the Seffion.

5^{to}. Many shireff-officers and messengers are delated for concussion and exactions of money to score men out of the roll ; and sometimes pretending they had warrants to cite them, when they had none.

6^{to}. Mr. Nathaniell Fyffe, Shireff-depute of Perth, and John Williamson his clerk, quarrelled for negligence and fraud in omitting to take up dittayes within the stewartry of Monteith, which is a part of ther shire ; (the proclamation was wrong pointed in this place.) They, according to the law of *Regiam Majestatem*, and *Quoniam Attach.*, ware laid over to the last day of the Air ; and then referred to Edinburgh : each of them turned over the negle&t upon another.

Some called for regratting and forstalling the mercats, and keiping up the vi&tuall they had bought, to a dearth.—One is called for mastrupation ; and many for adulteries.—The Toune of Carraill in Fyffe is accused for making such an Act as Hay of Woodcockdaill made (*supra pag.* 296) in Lithgowshire, that no burgesse pershue before any other Court but ther ounue.—One is clenged by the Affise of murder.

One Boog, tennent in Auchinreoch, having been delated, and produced a testificat under Sir W[illiam] Paterson Clerk of the Counsell's hand that he had tane the bond *debito tempore* ; and yet refusing to promise not to rise in armes heirafter, was coney-cached, and condemned to be hanged : And to strick the more terror, sent before them to Glasgow, wher it was accordingly execut ; and publick intimation was made in the Court that Boog was not hanged for refusing the Test, (as the rumor was, put to fright others from compearing,) but for his being in the rebellion at Bothuelbridge. The Justices would willingly have repreeved him, but they could not, but only the Privy Counsell :—yet they ware near as many Counsellors at Glasgow as might have made a *quorum* of the Privy Counsell ; only they would not attempt it without the Chancelor's consent.

At Glasgow, on the 10 and 12 of June, when they ware providing for Boog's execution, a controversie was started at Glasgow betuen the Magistrats of the Toune and Duke Hamilton's bailzie of the regality,

who should be at the expence ; the Toune alledging they ware but a brugh of barony ; yet in respect of the custome, the Magistrats ware burdened to prepare all necessars ; and wanting a hangman, they sent to Irving, 18 miles, for one.

Then a proclamation was made, inviting all to come in and inform against the 2 Lefmahago men, Macquuirrie and Smith, who, on the 8^t of June last, killed Mr. Murray one of the King's guard, neir to Inchbelly-bridge, and wounded Mr. Ballantyne another of them, who ware carrieng one Smith, a prisoner for rebellion at Bothuel-bridge, from Edinburgh to Glasgow, to be judged their ; with certification they shall be repute conceallers of ther treason and murder.

Then 2 small heritors, called Russells of Eistfeild and Windie-edge, and one Paterson of Bothuel-sheills, and Hamilton of Raith, and Hamilton of Parkhead, ware forfaulted in absence ; tho some of them ware proven to have been meerly in company with some of the rebels, without any armes at all, but only a staff in ther hand ; (see Mackenzie's Criminalls, page 66 and 340;) seing this cannot be called rising against the King in armes : Yet the old word in our law "is rysing in feir of weir," because tho unarmed, yet ther multitudes cause fear to the King's party ; and it's knownen that Generalls Montecuculi and Monck (the first throw infirmity, and the 2^d becaus of ane oath) never wore swords, yet, by ther counsell, they ware more formidable and dangerous then others.

Some ware pershuied for treasonable speaches, and for furnishing meat and drink to the Bothuel-bridge rebels, when they possest themselves of Glasgow, (which was partly extorted by force ;) but this was thought to be all pardoned by the Duke of Monmouth's Indemnity in August 1679 ; tho Riddell, Provest of Rutherglen, having been accused of thesse crymes, the said defence was not minded to be proponed for him till after sentence was pronounced against him.

Many gentlemen in Clidsdale, who ware conveined, as Lee, Orbiston, Walston, &c., took the Test, under protestation as no acknowledgement of guilt, but given as a testimony of ther loyalty ; and theiron the dyet was deserted against them. This was confidered as not sufficient by law to secure them ; for the Justices are only impowered by the King's letter

and proclamation to indemnify the commons on ther taking of the Test, but not heritors. So that they may still be pershued, by raising new letters, and the declaring that no new letters shall be raised, will not debar the King's Advocat from insisting heirafter ; so that a remission or new indemnity from the King for such who ather are guilty, or fear the forgery or impression of witnessses, is necessar for heritors, the Justices declaration being *ultra vires* as to them ; especially, if they be of any note, or exceed 4 or 500 m^{ks}. by year. All courses ware set on foot to spread the Test, to make it as universall as the Covenant was, which it is to root out, and persuade all, ather as voluntiers or as criminalls, to take it ; tho it be unwarrantable in law by this indirect way, without any law, to preffe the Test, and study to make it generall.

This Circuit may be principally designed to reach and forfault gentlemen heirafter for conversing with, or resetting fugitives, who shall be now declared in this Court ; and if they keep any heirafter, whosse names shall be printed ; (but the tyme is now prorogued to March 1684;) and it was threatned by the King's Advocat and others, that it should be no excuse to put them of ther ground and land, but they should deliver them up to justice ; yet the [4th] A&t in 1681, anent the securing the peace, requires only removing them ; but that speaks only of conventiculars, not of risers in arms. The fugitives that should be denounced at this Circuit ware ordained to be printed, that none, under the paine of treason, might harbor, converse with, or reset them after ; like the *longa tabula Syllana 3000 equitum Romanorum proscriptorum* by Sylla, as Tacitus reports it, which is just our fugitive roll.

The forsaids Macquhirry and Smith ware condemned for being at Bothuel-bridge, for treasonable speaches, for burning the Test at Lanrick, and for accession to Mr. Murraye's assasinate ; and had ther right hands cut of, then hanged and headed, and ther bodies hung up besyde the place of the murder in chains.—Then Maxuell of Boigton, and Maxuell of [Williamwood,] ware forfaulted in absence for accession to Bothuel-bridge.

At each place of the Circuit, a prote&ion was openly proclaimed in Court from all debts during the Circuit, and 3 dayes after ; and all mes-

fengers, under hyest paine, discharged to execute captions during that tyme, leift witnessses, under that pretence, be abstra&ted ; and fairs have this priviledge, *ergo* much more Circuits. Mr. Thomas Gordon, the clerk, for acts of caution and otherwayes, got much money, and took the manadgement of the Court mainly upon him, understanding its formes better then any of the Judges ther, and being supported with the Chancellor's favor. The freeholders in each district ware called : yet I think heritors, owing sute and presence at Justice Airs, may be absent, and answer by a letter of attorney from the Chancery ; but wher lands are united, the baron himselfe compears only in the shire wher he dwells, or the lands lyes to which they are united ; A& 95, Parliament 1503.

At this tyme, Gordon of Earleston and one Atkin ware apprehended at Newcastle, and sent doun to Scotland, and severall papers and commis-
fions taken on them. (See my Historick folio Manuscript at this tyme.)

Item, Andrew Gulan, weaver in Balmerinoch, one of the A. B. of St. Androis's murderers, is apprehended at Cockpen.

The laird of Houston of that Ilk, having lands in Stirlingshire, did answer ther at the calling of the suit-rolls ; but protested it should not oblige him as lyable, seing he dwelt in Renfrewshire, to which thir lands in Stirlingshire ware annexed.

No. 1012, 4 Julij 1683.—The English Phanatick-plot having broke out in Eng-
p. 326. land, we, to hold measure to them in our Privy Counsell, emitted a pro-
clamation for apprehending the Duke of M[onmouth] and Buccleuch, the
Lord Gray, Sir William Armstrong, and Mr. Robert Fergusson, minister,
and the other conspirators.

2^{do}. Ane A& is made, commanding Counsellors and Judges to attend
ther places, and not to goe out of the kingdome without leive.

3^{do}. Ther is ane A& anent the Mint, (*vide supra* pag. 323) closing it
up till the Parliament fit, to give it new regulations ; and ordaining the
Spanish Ryalls of 14 drap weight, to passe at 56 pence. Some merchands
thinks this way of crying up and serving ourselves with forrain coin is an
easier way of furnishing the country, (which custome Pole and some other
places uses ;) but it is not so creditable.

10 Julij 1683.—The Criminall Circuit Court (*vide supra p. 324, et seq.*) No. 1013,
fits doune at Edinburgh, wher some thought it superfluous, it being the
Justices ordinary residence : But Circuits as more splendid, stryke more
aw, and ty themselves to fewer formes then the ordinary Courts.

Gulan, (*de quo supra* the beginning of this page,) as obstinat, is sentenced, and hanged on the 13 of Jully :—for this cheirfull and vain way some of thir fanaticks dy in, see *alibi* remarks from Origen ; see also *Menoch. de Arbitr. jud. Quæst. casu* 285, from the Milesian virgins ; and some in Tarquinius's tyme, who took a fancy of dying.

Edward Atkin (who long concealed and dissembled his name) is condemned of treason, on that narrow point of naked converse with, and harboring of, Gordon of Earleston, a forfaulted traitor. Tho they might have got farder heads against him, yet *ad terrorem* on this fingle ridge they would goe ; and his day set was the 20 of July, but prorogat. He being a commoner, his taking the Test by the King's qualified Indemnity, would have purged this ; but he did not offer it.

Thomas Somervell, taylor in Edinburgh, being called for treasonable resett, was imprisoned, because he did not offer to purge himselfe by the taking of the Test : tho he offered caution, and was ready instantly to abyde a tryall, yet the case being treason, and the King's Advocat not ready to infist against him, in respect he had not fully considered his probation, they refused bayll.

On the 14 of Jully 1683, the King's Advocat, and Sir John Sinclair of Lochend the party greeved, pershuied Bailzie Kelly in Dunbar for oppres-
sion of the liedges, in not suffering ther oun men to ship ther corne, &c., but forcing them to employ the common Piners in ther toune, and exacting money for it. Alledged, It was a publick good ; for thesse Piners on this consideration kepted the harbory clean. The Lords continued it to November, and *medio tempore* discharged any such exactiōn.

24 Julij.—Ther is a letter from the King to the Criminall Court, discharging any procedor against the Earle of Brae[d]alban or Glenorchy and his sone, in that proces of treason, till farder order ; for he had come in will to the Duke of York :—afterwards he got a remission.

Item, Hamilton of Monkland is pannelled for treasonable converse with

the rebels at Bothuel-bridge when in armes ; tho he said it was only in feiking back a yong boy his sone :—he is forfaulted.

Ther is a motion in Counsell, that every Nobleman imprisoned in Edinburgh Castle shall pay for ther lodgings 50 lb. sterling, and every Gentleman 25 lb. sterling, tho they stay never so short tyme in.

2 Augusti 1683.—(To put all the Circuit togither, without interjecting the Privy Counsell affairs :) Lockhart of Bankhead, and Broun of Dun-canemor in Kylesmuir in Carrict, having been found guilty at the Circuit Court of Air upon probation by ane Affise ; they ware this day condemned of treason.

About and before this tyme, many gentlemen ware imprisoned as panelled for refett, and declining to purge themselves by taking the Test. Sir Robert Sinclar of Stevinson, Cockburne of Ormiston, Hepburne of Blackcastle, Bailzie of Laminton, Shaw of Greinock, and Sir Daniel Carmichell of Malleſly, and Maxuell of Newark, are put in the Castle : Ramsay of Idington, Hamilton of Aikenhead, and many other gentlemen, (for noblemen ware not taken up in this Porteous, but reserved for another tyme,) ware dispersed up and doun the prisons of Edinburgh, Cannogate, Leith, Haddington, &c. ; and, to show ther impartiality, 3 Popish lairds, Hamilton of Hags, Muirhead of Lauchop, and Glendynning of Parton, ware also imprisoned for refusing the Test ; but on the 7^t of August, they, forsooth, ware liberat, as loyall persons at Counsell.

Eodem tempore.—A new Commission is iſhued out by the Privy Counsell, to take farder tryall by a præcognition throw all Scotland, what may be got proven by witneſſes against any already in prison, or against any others that ware not delated, nor given up in the former Porteous roll : which will be the 2^d crop of advantage to Mr. Gordon the clerk.

Item, The Lady Longformacus being perſhuied for refetting of Rebels, and it being alledged for hir, that ſhee lived at Berwick ; the Criminall Lords ordained hir to find caution to live orderly when in Scotland, under the paine of 3000 mks., or elſe to remove out of Scotland never to returne without the King's ſpeciall licence. And this course they took with other weemen perſhuied, because they could not put them to take the Test.

Item, Seven of the Indulged Minifters being pannelled for breaking ther

instructions, in preaching without ther bounds, or against the Test ; 5 of them ware continued under caution to the 1 of December ; and the 2 other, viz., Mr. John Weitch, once at Weststruther, and Mr. Anthony Shaw, at [Newmills], ware incarcerat, because ther guilt seemed greater then that of the rest.

Item, Alexander Martin, wryter in Dunce, is conveened before the Criminall Court for 11 severall articles of falsehood, cheatry, malversation, and oppresion : as exa&ting 28 lb. Scots of charges for lifting 40 shilling Scots of cesse ; for causing witnessses subscrive before they saw the principall party signe it, [&c.]

Severall gentlemen who had been sent to prison for not offering to purge ther suspition of guilt by taking the Test, are freed on caution to appear in November or December, at the Justice Court, and are confined, some to Edinburgh and a mile about, and some to Kelso and elsewheir.—Ormiston, Stevinson, &c., who ware in the Castle, are liberat upon a deserting of the dyet against them, in regard the probation was not full. But ther was roume left to the King's Advocat to infist against them before the Privy Counsell, for a fyne to be imposed on them, for ther negligence in not purging ther lands of rebels.—Then the Chancellor made a 3^d classe or category, as Idington, David Osuald, &c. ; that on the old probation, or the præcognition and additionall commission, ther guilt was found more deep then others, as to the resetting and harboring ; and therfor they ware left in prison some tyme behind the rest ; treason of it selfe not being a baylable cryme : yet at last they ware all set at liberty on caution.

At this tyme, Douglas of Bonjedbrugh is fyned by the Laird of Meldrum, as the Counsell's Shireff of Teviotdale, for his oun and his Ladie's irregularities in absences from the Church, in privat baptismes, &c., in 27,500 mks. : And Sir William Scot of Harden for the like faults, in 46,000 lb. Scots : which are wast summes of money. But Harden meaning himselfe to the Counsell, he is heard on the 16 of August, and alledged, 1^o. Upon a discharge granted to him by the Earle of Home, and his deputs as Shireffs of the Merse. The Lords finding it collusive, and far within the fyne imposeable on him by the Acts of Parliament, they suf-

tained it to exoner him so far as he had payed of it to them, but no farder. 2^{do}. He alledged the A&s of Parliaments in 1670 and 1672, imposing fynes on absents from the Church, did not declare husbands liable for ther wifes, as the a&s of thesse Parliaments against Conventicles did ; without which be expreſly insert in the act, he cannot be liable for his wife's withdrawing. Yet notwithstanding, the Lords ordained him to depone on the libell. Afterwards he was liberat out of the Castle on caution, but confyned to Edinburgh.

No. 1014, 12 *Julij* 1683.—At Privy Counsell, Thomas Hamilton, merchand in p. 327. Edinburgh, gets the sole priviledge and gift of making beaver hats for 9 years to come.

No. 1015, 2 *Sextilis vel Augufti* 1683.—Several merchands of Edinburgh being p. 327. perſhuied at Privy Counsell for venting prohibited goods ; they alledged, They had not imported them, but only bought them from importers, or others who had them beſyde them, before the manufactory and prohibitorie A&t was made. The Lords inclined to find, tho men might buy ſuch things for ther oune uſe and wearing, yet that merchands might not buy them to retaill and ſell out again. Likeas, ſome of them had given them up in inventar, (as was appointed by the A&t in Aprill 1681,) and they had not been perſhuied within 3 moneths, as that A&t præſcryves. Ther was ane A&t of Secret Counsell made on this.

2^{do}. One Duncan perſhuies Brown of Gorgie-milne, for violent ejecting him out of a milne, wheirof he had a tack for years yet to run, and wheiron he had taken ane instrument againſt him. The Lords fand his libell relevant, and admitted it to probation.

3^{do}. Monkland and Aitkin repreeved for a tyme.

4^{do}. The Counsell at laſt takes of William Cockburne merchand his banishment out of Lothian, tho Oxenfurd oppoſed it all he could. It had ſtood 9 years. (See it *alibi* in the end of 1674.)

No. 1016, 7 *Augufti* 1683.—The King's printed Declaration anent this late p. 328. Phanaticall-plot was red in our Privy Counsell, and a thankſgiving

appointed on the 9 of September throw all Scotland (the same day is also set in England) for its discovery ; and his Declaration to be red throw all the Churches. They would not make it on a week-day, leift the peopple might have withdrawn and absented themselves from it.

16 *Augusti* 1683.—At Privy Counsell, ther are 2 severall complaints No. 1017,
exhibited against the Toune of Edinburgh ; the one by the Officers of the ^{P. 328.} Mint, and some smiths, tailzeors, wrights, and other tradfsmen depending on it. The 2^d, by the Incorporation of the Silkweavers ther, bearing, That by his Majestie's gifts and the A&ts of Parliament, they ware exeemed from all cesses and publick burdens, and from watching, wairding, and going furth in the militia, and from Minifters annuities and stents ; and yet they ware poinded by the Toune's collectors, without regard to ther priviledges.—The Counsell fand the officers and servants of the Mint had ane exemption ; and [that] the Silk-weavers ware a privileged manufactory ; yet they sustained the Toune's defence, by which they offered them to prove, that they exercised other trades, and keiped chops [shops] as cooks, or for ale and brandee, &c., within the Toune, for which they ought to bear burdens ; and referred this to ther oaths. (*Vide infra.*)

2^{do}. Sir William Scot of Harden's cause was heard, (*de quo supra.*)

3^{do}. Helen Ramsay, reli&t of James Aikenhead apothecary, pershues Sir Patrick Hepburne of Blackcastle, for wounding and beating hir, in the eje&tting hir out of hir chop [shop]. Alledged, The eje&tion was legall, by vertue of a decreet of removing obtained against hir by Sir Patrick : but as to the ryot of beating, denyes it, tho shee gave them very opprobrious language. Hir libell was admitted to probation ; but the ryot seemed rather to ly in the unseasonableness of the ejection, it being under the cloud of night, about 11 a'cloak.

4^{do}. The Parliament is prorogued by a letter from the King, and a proclamation, from the 17 of July, on which it should have mett, to the 6^t of December nixt. It was doubted if it was not extinct, by suffering the day to passe without meeting, or a new prorogation then : it was meer forgetfulness ; but this may yeeld a cavill to question what shall hearafter passe in this Parliament.

5^{to}. The printed proclamation mentioned in the preceding page comes furth against the Merchants, who, under the pretence of exchanging prohibited commodities with others, did continue to sell them, which is declared as unlawfull as if they had imported them : it also commands them to give up faithful inventars.

6^{to}. Skeen of Halzeards in Fyffe complains upon one James Dewar for slandering him : (see it *supra pag.* 324 :) he not appearing, is ordained to be apprehended and imprisoned, and therafter to crave him pardon at the Shiref Head-court.

7^o. Mr. James Ogilvy, 2^d son to the Earle of Finlater, pershues Sir Robert Hepburne of Keith's reliet, at Privy Counsell, for exhibiting Sir Robert's latter will, and other wryts abstracted by hir, wheirby he had left legacies, and confiderable summes of money to him. Shee is ordained to depone.

8^o. On a complaint given in by my Lord Lithgow, and Leviston his sone, against the Toune of Lithgow, and Alexander Milne ther Provest, and the other Magistrats, that they ware slack, negligent and remisse in putting the Ecclesiastick laws to execution, as to Conventicles, absents from the Church, rebels, and ther refettors : The Lords of Counsell named and gave commission to the Bisshop of Edinburgh, and my Lord Abotshall, to goe to Lithgow, to try the matter of fact, and to report.

No. 1018, *Eodem tempore*.—Gordon of Earleston is brought to the bar of the p. 328. Crimall Court, and the sentence of forfaulter and death, formerly pronounced against him, is red to him, and the tyme of his execution is prefixed to him, viz., the 28 of September nixt : But ther came a letter from the King, proroguing the tyme, and appointing him to be put in the boots anent his complices, he having been hitherto very disingenuous. The Counsell wrot back to the King, that it was not very regular to torture malefactors after they ware condemned to dy, but only before conviction. He attempted to escape, but was hindred.

No. 1019, 3 *Septembris* 1683.—Mr. John Dick, sone to David Dick wryter in p. 328. Edinburgh, a Carguellian, being apprehended, is pannelled before the

Criminall Court, and, on his oun confession, is found guilty by the Assise, of being at Bothuel-bridge, and of treasonable ouning thesse rebellions, and of adhæring to Welsch, and the Covenant, with great obstinacie. He is sentenced to be hanged at the Grasse Mercat, on the 26 of September nixt. (*Vide infra* more, the nixt page.)

11 *Septembris* 1683.—At Privy Counsell, one Bailzie Birsbane, with the No. 1020,
Magistrats of Air, and one Bailzie Wallace, have mutuall complaints one p. 328.
against another, anent the choising of the Counsell of the said Brugh for the year inshueing. The Counsell ordained each of them to give in lists of such as they judged fit; and declared, they would choise out of the 2 lists.

2^{da}. The Toune of Lithgow's affair (*de quo superiore pag.*) being reported, the Counsell fand the Toune negligent, and therfor rebuked Provest Milne; and gave a cumulative jurisdiction to my Lord Leviston to goe over the inhabitants delinquents again, and to sweep cleaner.— Ther was also this day a contest betuen Kennedy, Provest of Stirling, and old Provest Russell.

3^{to}. The Toune of Edinburgh having neglected to take out ther diligence about the Silk-weavers and Mint-men, (*vide præcedentem pag.*) for proving ther defence, they by a bill declared they would refer it to ther oaths; which the Counsell admitted of.

4^{to}. Earleston gets a repreive to the 2^d Fryday of November, that in the mean tyme he might deall for a remission; but they refused David Dick's bill for his sone, craving a commutation of the punishment to banishment, &c.

5^{to}. The Toune of Edinburgh having given in a bill, craving liberty to uplift the fynes they had imposed upon ther burghesses for absence from the Church, &c., tho the Hy Treasurer acclaimed the fynes of such of them as ware heritors, conforme to the [5th] A&t of Parliament in 1670: but the Toune alledged, Heritors most be understood, of heritage lying in landwart, not of heritors or landlords within brugh, who hes but a chop, it may be. The Privy Counsell laid the consideration of this aside till November.

6^{to}. Mistris Telfer, the printer, gave in a complaint against John Reid,

who, contrare to his bond, had set up a printing house. Alledged, 1^o He had a licence from hir son, who had right to that gift of printing. 2^o. Hir gift as exorbitant was restricted, in the late debate betuen hir and David Lindsay, (*supra pag.* 286,) to what was in Evan Tylor's gift in 1641, and no farder. The Privy Counsell discharged John Reid to print till he fand caution in ther books that nothing should passe his irons, till first licenced and allowed; and then permitted him to print any thing not given away to the King's Printer, by Evan Tylor's gift, to which they restrict hir's. And as to his contraventions, and the discharge he founded on, fand that a civill point, and referred them to ther declarators and reductions theranent before the Session.

Eodem tempore.—One Wander Heyde, a Dutchman, is apprehended for coyning false mark pieces, wher the stamp was very exa&tly counterfyted.

No. 1021, 15 *Septembris*.—At night, Mr. John Dick (*de quo pag. præcedente*) p. 329. and 22 mo prisoners broke the Tolbooth of Edinburgh, and escaped out of a window by ropes, having cutted the iron stanchells: 2 or 3 of them ware in only for civill debts; the rest, as Aitkin, Lapsley, (*de quo supra 7 Octobris 1681,*) and the 2 dragouns who killed Seton of Carriston's son, ware in for crymes, and some of them shortly after to be hanged.

No. 1022, 20 *Septembris* 1683.—The A&t of Counsell on the King's letter is made, p. 329. prorogating the dyet of taking the Test to some of the commons for a longer tyme, and indemnifying such heritors as had tane it *quoad* ther life, reserving power to infist against them for a fyne.

No. 1023, 24 & 25 *Septembris* 1683.—A Committee of the Privy Counsell was p. 329. called extraordinary, to intimat to the Magistrats of Edinburgh the King's pleasure send doune to them by a letter of Midleton his Secretary, recommending to the Toune Counsell to choise Bailzie Drummond Provest, as ane disinterested person, till the counts of the misapplication of the Toune's common good be cleared before the Exchequer; (*vide supra pag.* 319,) and annulling Sir James Rocheid's taking in James Hamilton as his conjunct in the Clerkship. This letter (with the strentch of the

byaffe and genius of the Toune against them) broke Rocheid and Kinloch's party in the Toune Counsell. Wheiron Sir James Fleeming then Provest, to get in Bailzie Crawford and others of ther oune faction the inshueing year, made ane act, that whoever refused to accept ane office, should pay 500 lb. sterlincg of fyne. But so soon as Drummond was chosen Provest, he reschinded this A&t, and got in Bailzies of his oune desiring ; and made 2 acts to please the Trades and Toune : the one was, taking away the sentence money from the Clerk, and applying it (as is exspeted) to pay the guard or watch-money *pro tanto*, to ease the neighbours of that cesse. 2^{do}. That the Toune Counsell shall ever heirafter give out the Trades 3 of ther oune 6 that they give in, that out of thesse 3 the Trades may choise one of them to be ther deacon. This concession abridges the Merchands power much, and gives away, to please the Trades, a great jewell, by which they sometymes overawed the Trades : for when the Merchands did not like any of the Trades 6, they gave them out 3 which was none of them. Nather was this contrare to King James his Set or Decreet-arbitrall. 3^{do}. The A&t made in 1675, discharging Clerks to meddle in elections, reschinded by Rocheid, was now revived against him. 4^{to}. That no weemen serve in taverns or low cellars ; because it occasions much uncleannessse. This was not put in execution, because they ware feid for this year coming, before the A&t was made ; but they promised to observe it the nixt year. The caulfey whoores ware trapped by the officers pretending themselves sojors, and ware im-prisoned. Thus new Lords bring in new laws ; and insensibly the Toun of Edinburgh hes the liberty of ther free elections incroached on without much clamor, because in this particular it went with ther oune inclinations. However, this and former precedents may lay a foundation and preparative for assuning the governement of Edinburgh, (and consequently of the other Burrows royall in Scotland,) without a *quo warranto* decree, which he was put to in London ; all which are inlets to &c. ; but the King will be most just.

Eodem tempore.—A new letter from the King is red about the signator No. 1024, of Argile's estate, (*vide supra pag.* 320) and division of his forfaulter,^{p. 330.}

stopping it till farder order. Some thinks it's to take away what was given to my Lord Lorne, and the other children ; the King not thinking it fitt to keep up any memory or representative of this family ; seing it appears Argyle hes been in this last plott. Yet ther *jus quæsum* by the signator cannot be recalled, nor Lorne deprived of what he was provided to by his contra&t of marriage, and which was confirmed before his Father's treason. Yet the anterior creditors being let louse, may reduce Lorne's right on the A&t of Parliament in 1621 as *inter conjunctos*, &c. *Quæritur*, If what be taken from the children will be given to the creditors to help them ?—Some talk the King will purchasse Kintyre, and give it to Prince George and his neice : Others spoke of Orknay and Shetland, and to creat him Duke of it ; which title Bothel Hepburne got from Queen Mary his wife : but that was thought not politique ; for that might re-annex them sometyme again to Norroway and Denmark, to which they once belonged and ly nearest ; which might mar our trade exceedingly.

No. 1025, 10 Octobris 1683.—The Synod of Edinburgh sat doun, and not having
p. 330. much else adoe, enacted, 1^o. That Ministers should not sit in the pulpit, but stand all the tyme they are in it. 2^o. Shall *per expreßum* pray for the Arch-Bischops and Bischops. 3^o. Shall in praying for the King mention his being Supream head of the Church, in all causes, and over all persons. 4^o. Who ever used Lectures shall forbear them. 5^o. They shall cause to sing the Doxology [at] both the dyets of sermon. 6^o. They shall desire the peopple to stand to the prayers, and not to fitt. 7^o. A complaint being made, that the Indulged Ministers the thanksgiving day, on the 9^t of September laſt, did not speak clearly that ther was any reall Plot ; the Bischop told them, it belonged to the Privy Counsell to censure that.¹

¹ See a Continuation of thir Observes and Decisions of the Lords of Session in another folio Manuscript like this, but of 6 quaires, and marked with the letter and figure A. 13 ; which begins with November 1683, and the following moneths of that Winter Session ; which I began ther, because the remaining leives of this book would not have been able to contain that wholle Winter's Decisions, it not being fit to divide it in two books : And which volume [the Author has afterwards added] carries on the Decisions to the Revolution in November 1688, by the space of 5 years.

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